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REVISION OF TITLES 2 AND 3

AND SECTIONS OF OTHER TITLES
OF THE

MAY 31 1951

Revised Statutes of New Jersey



Tentative Draft

Part II

TITLE 3A—CHAPTER 1 TO CHAPTER 45

SECTIONS OF TITLE 4 TO TITLE 58

PROPOSED ADDITIONAL LEGISLATION, NEW RULES
AND CHANGES IN RULES

Prepared by

REPORTERS FOR THE ADVISORY COMMITTEE
ON REVISION OF STATUTES

GANN LAW BOOKS
NEWARK, NEW JERSEY

Errata:

PART I

2A:97-4. This section inadvertently placed in proposed additional legislation. It has not been substantially changed.

Distribution table, p 395, should read:

2.97-11..... 2A.97-4



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11 Commerce Street, Newark 2, New Jersey

*Suggestions and criticisms should be sent to the Committee
before May 18, 1951, as stated in the Foreword.*

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Foreword

The Advisory Committee on Revision of Statutes solicits of the bench, the bar and the public suggestions with respect to both the language and the substance of the tentative draft submitted herewith. Please—

1. prepare recommendations in triplicate.
2. deal with each section of the statute and each rule on a separate page of normal correspondence size (8½ X 11).
3. refer to the section or rule by its number and by indicating the page on which it appears in the preliminary draft.
4. where any change is proposed, draft the changed statute or rule as in the form of bills submitted to the Legislature—that is, by underscoring new words and bracketing omitted material.
5. state *briefly* the reasons for the recommendations.
6. send recommendations to John H. Yauch, Jr., Secretary of the Committee, 11 Commerce Street, Newark 2, N. J.

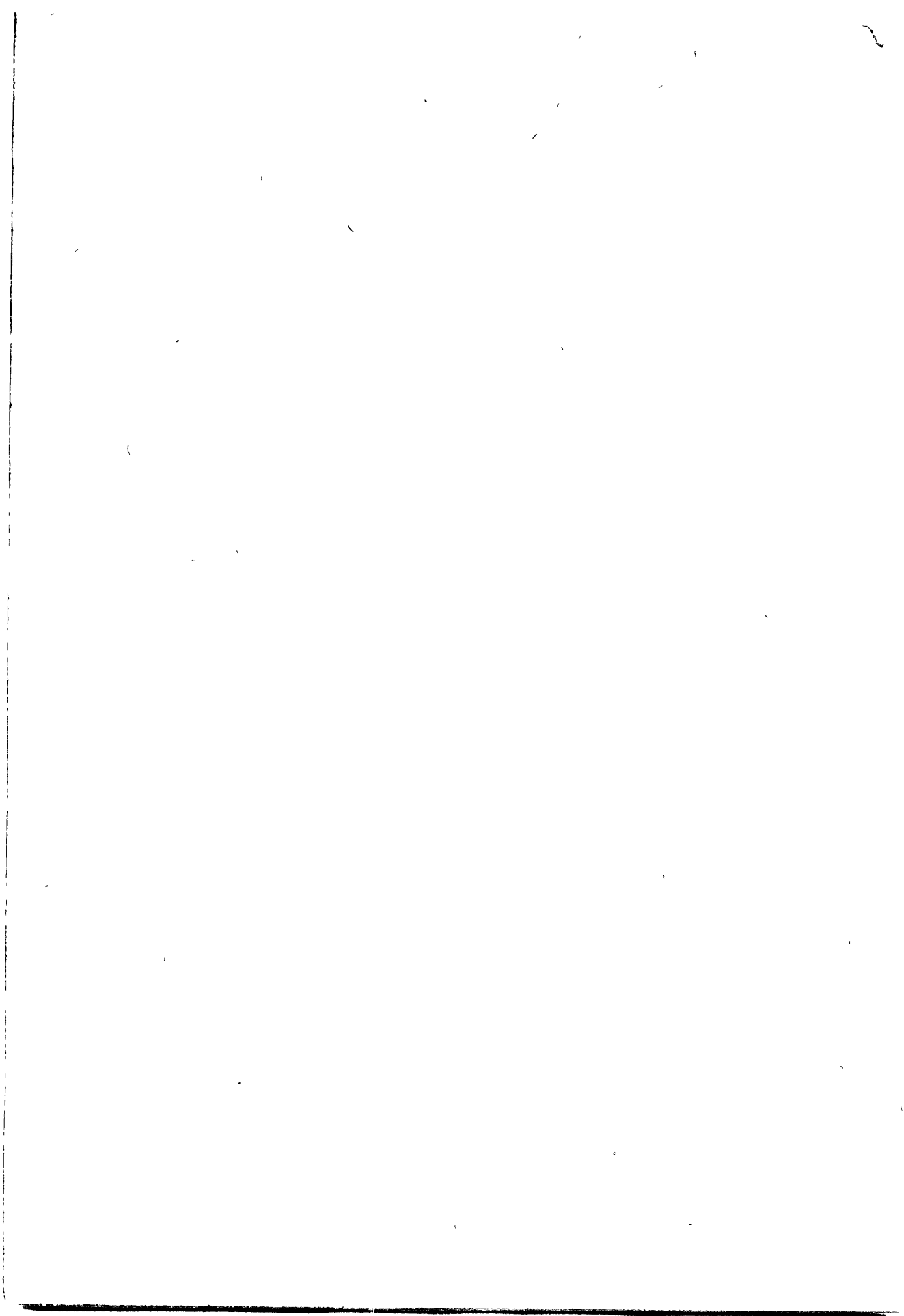
It is imperative that all suggestions be in the hands of the Secretary by May 18, 1951.

April 20, 1951

ADVISORY COMMITTEE ON
REVISION OF STATUTES

The Advisory Committee on Revision of Statutes wishes to express to the reporters listed below, its appreciation for their very great service in preparing this draft. All of them have put in, themselves or through their offices, several weeks in this work, the magnitude of which may be indicated by the fact that it covers nearly one-fourth of the Statutes of New Jersey. When the final draft comes before the legislature, the legislative members of the committee propose to introduce in that body a resolution by way of public acknowledgment of the reporters' labors here on behalf of the bar and the people.

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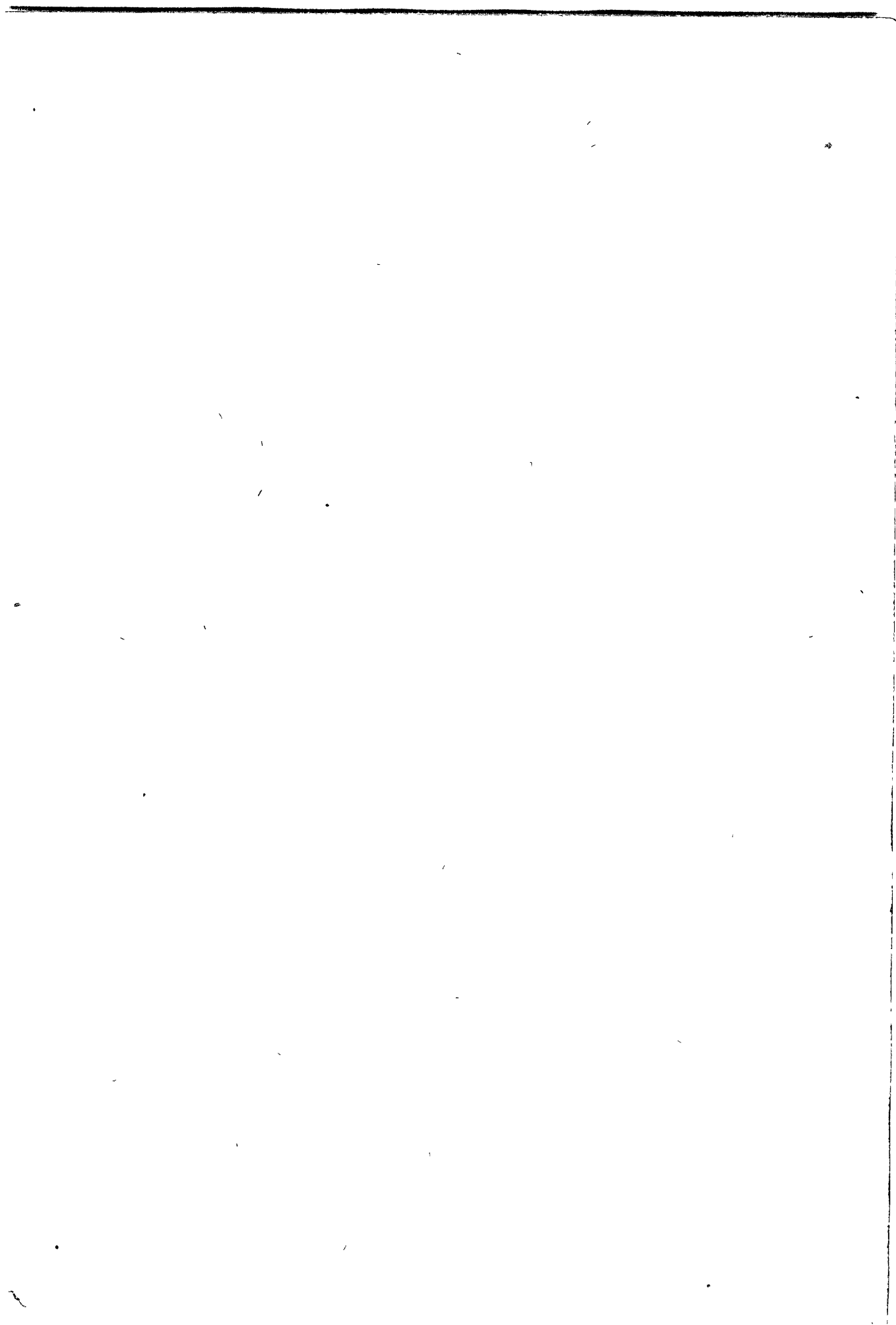
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Title 3A. ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS.

Subtitle 1. JURISDICTION AND DUTIES OF COURTS IN GENERAL.

Chapter 1. GENERAL JURISDICTION AND DUTIES OF COUNTY COURT AND SURROGATE.

Section		Section	
3A 1-1.	General authority of county courts as to probate matters	3A 1-5	Authority of surrogates to open, vacate, modify or set aside judgments or to enter them nunc pro tunc
3A 1-2	Jurisdiction of county court over surrogate's proceedings	3A 1-6	Oath, affirmation, affidavit, deposition or proof
3A 1-3	Proceedings in county court on order to show cause	3A 1-7	Subpoenas, issuance of by surrogate
3A 1-4	Disputes or doubts in proceedings before the surrogate	3A 1-8	Penalty for failure to obey subpoena

3A:1-1. General authority of county courts as to probate matters. The county court of each county shall have full authority to hear and determine all controversies respecting wills, inventories, administration and guardianship, and full authority over the accounts of executors, administrators, guardians and trustees, as directed in Title 3A, and also authority over all other matters and things as are submitted to its determination in said title.

Source. R S 3 1-2

3A:1-2. Jurisdiction of county court over surrogate's proceedings. The county court of each county shall have jurisdiction, pursuant to the rules of the supreme court, to hear and determine disputes or doubts arising before the surrogate or in the surrogate's court of the county, to review any order, determination or judgment of the surrogate or the surrogate's court of the county and upon the review to hear and determine the matter, and to grant relief from or to direct the entry of, as of a former time, any order, determination or judgment of the surrogate or the surrogate's court of the county

Source C 2 1B-27, L 1948, c 365, §27, C 2 1B-28, L 1948, c 365, §28

3A:1-3. Proceedings in county court on order to show cause. The county court of each county, in any proceeding in the probate division against executors, administrators, guardians, trustees or other persons, may proceed by order to show cause, a copy of which shall be served, as the court may direct, upon the person therein named, whether or not he is within the county

Source. C 2 1B-32, L 1948, c 365, §32

3A:1-4. Disputes or doubts in proceedings before the surrogate. In the event of any dispute or doubt arising, in respect to which the rules of the supreme court require the surrogate not to act in the matter, the surrogate shall take

no further action therein, except in accordance with the order of the county court of the county

Source C 2 1C-3, L 1948, c 364, §3

Note of Reporter The surrogate's courts have jurisdiction only over the probate of wills, the grant of administration and of guardianship of infants, the issuance of letters of trusteeship and "legally dead proceedings" Since all these matters are dealt with in Title 3A, the jurisdiction of the surrogate is stated in this title—and not in chapter 7 of Title 2A C 2 1C-3, unlike Rules 5 3-3 and 5 3-5, forbade the surrogate to act in any case in the event (1) a doubt or dispute arose, and (2) "an application [was] made to the probate division of the county court of the county pursuant to the said rules". The quoted words have been eliminated from the statute. If a doubt arises on the face of a will or a will is lost, the surrogate should not act even though no one makes an application to the county court pursuant to the rules. Moreover, if a caveat was filed or a dispute arises, the surrogate should not have the power to enter judgment prior to the application. It would seem better to throw the whole matter into the county court

Under the proposed amendments to Rules 5 3-3 and 5 3-5, either party can clearly bring the matter on before the county court, 1 party cannot hold up the proceeding. If a caveat or dispute is withdrawn before the county court's order to show cause is signed, proceedings may be continued in the surrogate's court—quite like the former practice where a caveat was withdrawn before citations were issued. Moreover under the proposed statute where a caveat is withdrawn after the order to show cause is signed, the county court may order that proceedings be continued in the surrogate's court

3A:1-5. Authority of surrogates to open, vacate, modify or set aside judgments or to enter them nunc pro tunc. The surrogates of the several counties shall have authority to grant relief from, or to enter as of a former time, any order or judgment of the surrogate's court, but only in an uncontested matter, on order to show cause and in a summary manner, and in a case like that in which a court of record and of general jurisdiction exercises the same authority

Source. R S 2 31-4, repealed L 1948, c 364, §26

Note of Reporter It perhaps was the intention of chapters 364 and 365 of L 1948 to allow the surrogate the otherwise grant relief therefrom, all as provided by power to open, vacate, etc his own judgments and

Rule 5 3-5 in the case of an undisputed matter. However, this intention was not expressed. Where a party applies to open up a surrogate's judgment and has the consent of all other parties in interest, the proceeding can be passed upon by the surrogate, likewise where a probate judgment is opened up in order to take the proof of another subscribing witness to the will, the proceeding like all probates in common form is undertaken without notice, and hence may be brought on before the surrogate. Where, however, there is a dispute, the surrogate cannot act and an order to show cause should be secured from the county court.

3A:1-6. Oath; affirmation; affidavit; deposition or proof. Any oath, affirmation, affidavit, deposition or proof required to be made or taken in any proceeding before a surrogate or in the county court of any county, or necessary or proper to be used before the surrogate or the court, may be made and taken before the surrogate of the county or before any person authorized by law to administer oaths. Qualifications of executors and administrators and acceptances of trusteeships and guardianships may be taken as provided by the rules of the supreme court.

Any oath of an executor, administrator or appraiser required by law to be taken to, upon or in connection with any inventory may be taken before any person authorized by law to administer oaths in this state.

Source 2 1C-5, L 1948, c 364, p 1461, §5

3A:1-7. Subpoenas, issuance of by surrogate. A surrogate may issue process of subpoena to any person within the state to appear and give evidence in any action or matter pending before him.

Source 2 1C-6, L 1948, c 364, p 1462, §6

3A:1-8. Penalty for failure to obey subpoena. Any person subpoenaed as a witness by a surrogate, who does not appear pursuant thereto, or appearing refuses to serve or give evidence, without reasonable cause assigned, shall, for every such default or refusal, be subject to a fine of not more than \$50 00 nor less than \$1 00, as the surrogate issuing the subpoena shall by judgment determine proper to impose. The fine, when collected, shall be paid to the county.

In default of the payment of a fine so imposed, the surrogate by his judgment may commit the witness to the county jail of the county until the same is paid or he is sooner discharged by order of the surrogate.

The judgment of the surrogate imposing a fine or committing the witness to jail shall be reviewable by the county court in the same manner as judgments of the surrogate are reviewed.

Source 2 1C-7, L 1948, c 364, p 1462, §7

Subtitle 2. WILLS, DESCENT AND DISTRIBUTION.

Chapter 2. WILLS.

Section

Article 1. Requisites, Effect and Construction

- 3A 2-1 "Will" defined
- 3A 2-2 Persons incompetent to make will
- 3A 2-3 Blank See proposed additional legislation
- 3A 2-4 Methods of revoking written wills
- 3A 2-5 Methods of altering written wills
- 3A 2-6 Blank
- 3A 2-7 Blank See proposed additional legislation
- 3A 2-8 Effect of devisee or legatee attesting will
- 3A 2-9 Attesting witness not to receive gift directly or indirectly
- 3A 2-10 to
- 3A 2-13 Blank
- 3A 2-14 Manner in which after-acquired property passed
- 3A 2-15 After-born children, when total intestacy results
- 3A 2-16 After-born children, when partial intestacy results
- 3A 2-17 Blank
- 3A 2-18 Provision against lapsed gifts
- 3A 2-19 Residuary devises or bequests, failure by death of beneficiary or otherwise
- 3A 2-20 Construction when "heirs and assigns" omitted from devise, fee conveyed
- 3A 2-21 Blank

Article 2 Probate and Record

- 3A 2-22 Probate of will and grant of letters by surrogate
- 3A 2-23. Blank

Section

- 3A 2-24 Time for probate of written will, time for filing petition for probate, etc
- 3A 2-25 Probate of will of testator who died in military service or within 2 years of discharge
- 3A 2-26 Probate of will where subscribing witnesses are in service in time of war
- 3A 2-27 Testator or witness in armed forces, form of will, competency of witness
- 3A 2-28 Order to compel production of purported will
- 3A 2-29 Allowances by superior or county court to widow or children pending contest over probate of will
- 3A 2-30 Blank
- 3A 2-31 Filing probate record with surrogate of any county
- 3A 2-32 to
- 3A 2-36 Blank
- 3A 2-37 Probate of will of nonresident probated in another state or country
- 3A 2-38 Recording of will of nonresident probated in another state or country
- 3A 2-39 Blank
- 3A 2-40 Blank
- 3A 2-41 Probate of will of nonresident decedent not probated elsewhere
- 3A 2-42 Blank
- 3A 2-43 Foreign wills probated or recorded prior to July 4, 1888, record informal or lost [saved from repeal]
- 3A 2-44 Recording of wills probated 100 or more years ago in another state or country [saved from repeal]

Section

3A 2-45 Wills probated 100 or more years ago, presumption of testator's competency [saved from repeal]

Article 1 REQUISITES, EFFECT AND CONSTRUCTION.

3A:2-1. "Will" defined. As used in this subtitle "will" means the last will and testament of the testator and includes any codicil

Source R S 3 2-1

3A:2-2. Persons incompetent to make will. Wills made by a person within the age of 21 years, or by an idiot, lunatic or person of non-sane mind and memory, shall not be valid.

Source R S 3 2-2

3A:2-3. Blank See proposed additional legislation

3A:2-4. Methods of revoking written wills. No written will, or any devise or bequest therein, or any clause thereof, may be revoked except by

a. Burning, canceling, tearing or obliterating the same by the testator himself or in his presence by his direction and consent, or

b. Another will or codicil in writing revoking or altering the same, or other writing declaring the revocation executed in the manner in which wills are required by law to be executed.

Source R S 3 2-4

3A:2-5. Methods of altering written wills. No devise or bequest in, or clause of a written will may be altered, except by another will or codicil in writing or other writing declaring the alteration executed in the manner in which written wills are required by law to be executed.

Source R S 3 2-5

3A:2-6. Blank.

3A:2-7. Blank See proposed additional legislation.

3A:2-8. Effect of devisee or legatee attesting will. No person who has attested a will shall be incompetent to testify concerning the execution thereof by reason of his being a beneficiary thereunder; but whether or not he testifies, as to him and those claiming under him, any beneficial devise, legacy, estate, interest, gift or appointment of or affecting real or personal property, except a charge on real property for the payment of a debt, shall be void

Source R S 3 2-8

3A:2-9. Attesting witness not to receive gift directly or indirectly. No attesting witness to whom a beneficial estate, interest, gift or appointment is given or made, which is declared null and void pursuant to section 3A 2-8 of this title, shall demand or take possession of, or receive any profit or benefit of or from such estate, interest, gift or appointment so given or made to him by the will, or demand, receive or accept from any person any such legacy or bequest, or any satisfaction or compensation for

Section

3A 2-46 Wills of residents who died before 1895 probated in other states, conveyances valid [saved from repeal]

the same, in any manner or under any color or pretense whatsoever.

Source R S 3 2-9

3A:2-10

to

3A:2-13. Blank See proposed additional legislation

3A:2-14. Manner in which after-acquired property passed. Real property acquired by a testator after making his will shall pass by any general or special devise or sale under any power of sale contained in the will sufficient to include such real property, had the same been acquired before the making of the will, unless a contrary intention appear on the face of the will

Source R S 3 2-14

3A:2-15. After-born children; when total intestacy results. A will, made when a testator had no issue living wherein any issue he might have is not provided for or mentioned, shall be void and the testator be deemed to die intestate if, at his death, he leave a child or issue or leave his wife enceinte of a child which shall be born.

Source R S 3 2-15

3A:2-16. After-born children; when partial intestacy results. If a testator, having any child born at the time of the making of his will, shall, at his death, leave any child born after the making thereof, or any issue of any such after-born child, such after-born child or his issue, if neither provided for by settlement nor disinherited by the testator, shall take the same share as if such testator had died intestate

Toward raising any such share, the devisees and legatees and their representatives shall contribute proportionately out of the part devised or bequeathed therein to them.

Source R S 3 2-16

3A:2-17. Blank See proposed additional legislation.

3A:2-18. Provision against lapsed gifts. When a devise or bequest is made by will to a child or other descendant of the testator or to a brother or sister or any descendant of a brother or sister of the testator, and such devisee or legatee shall, during the life of the testator, die testate or intestate leaving any child or any descendant of a child of such devisee or legatee surviving the testator, such devise or legacy shall not lapse but shall vest in any such child or descendant of a child of such devisee or legatee as if such devisee or legatee had survived the testator and died intestate; but this section shall not apply where the testator shall by the will or codicil thereto, or other instrument, have otherwise directed in regard to the children or descendants of such devisee or legatee.

Source R S 3 2-18

3A:2-19. Residuary devise or bequests; failure by death of beneficiary or otherwise. When a residuary devise or bequest shall be made to 2 or more persons by the will of any testator dying after July 3, 1947, unless a contrary intention shall appear by the will, the share of any such residuary devisees or legatees dying before the testator and not saved from lapse by section 3A 2-18 of this title, or not capable of taking effect from any other cause, shall go to and be vested in the remaining residuary devisee or legatee, if any there be, and if more than 1, then to the remaining residuary devisees or legatees in proportion to their respective shares in said residue

Source C 3 2-19 1, L 1947, c 380, §1, L 1948, c 139, §1, R S 3 2-19

3A:2-20. Construction when "heirs and assigns" omitted from devise; fee conveyed. When a devise of real estate within this state to any devisee omits the words "heirs and assigns" and the will contains no expressions indicating an intent to devise only an estate for life, or the real estate is not further devised after the death of the devisee, the devise shall be deemed to pass an estate in fee simple to the devisee as if the real estate had been devised to the devisee and to his heirs and assigns forever

Source R S 3 2-19

3A:2-21. Blank

Article 2. PROBATE AND RECORD

3A:2-22. Probate of will and grant of letters by surrogate. Except as stated in section 3A 1-4 of this title, the surrogates of the several counties shall take depositions to wills and may admit the same to probate, and grant thereon letters testamentary or letters of administration with the will annexed.

Source R S 3 2-22

3A:2-23. Blank See proposed additional legislation.

3A:2-24. Time for probate of written will; time for filing petition for probate, etc. No will shall be admitted to probate until after 10 days from the death of the testator; but the complaint and other papers in any action for the probate of a will may be filed, and the depositions of the witnesses thereto and the qualification of the executor or administrator with the will annexed may be taken at any time subsequent to the death of the testator and before the will is admitted to probate

Source. R S 3 2-24

3A:2-25. Probate of will of testator who died in military service or within 2 years of discharge. When a resident of this state dies while a member of the armed forces of the United States or within 2 years from the date of his discharge from such armed forces and no subscribing witness to his will is available in this state to prove the will, either because of death, incapacity,

nonresidence, absence, or for any other reason, such will shall be admitted to probate upon proof of the signature of the testator by any 2 persons, provided the will has an attestation clause followed by what purports to be the signatures of at least 2 subscribing witnesses to the will

Source. C 3 2-24.1, L 1944, c 21, §1.

Note of Reporter. Rather surprisingly, this statute applies even though the will was made by the testator in time of peace before he joined the service. Moreover it applies even though the testator dies a resident of the armed forces in time of peace

3A:2-26. Probate of will where subscribing witnesses are in service in time of war. When the only living subscribing witness or witnesses, to the will of a resident of this state, is not or are not available in this state to prove such will, because of absence from the state in the active military service of the armed forces of the United States in time of war or of any ally of the United States in time of war or because of absence from the state in service as a merchant seaman in time of war, such will shall be admitted to probate upon proof of the signatures of the subscribing witnesses to the will

Source C 3 2-25 1, L 1945, c 210, §1

3A:2-27. Testator or witnesses in armed forces; form of will; competency of witness. No will shall be admitted to probate under section 3A 2-25 or 3A 2-26, unless it would have been admitted to probate upon the proof of the signatures of the subscribing witnesses in case they were all dead.

No person to whom a beneficial estate, interest, gift or appointment is given or made by such will shall be a competent witness to prove any signature under said sections.

Any person who acts as a witness to prove any signature under said sections and who, in any manner or under any color or pretense whatsoever, demands, receives or accepts from any person any satisfaction or compensation, over and above a reasonable amount to compensate him for the time and the expense involved, for so testifying, shall be guilty of a misdemeanor

Source C 3 2-24 1 to C 3 2-24 3, L 1944, c 21, and C 3 2-25 1, L 1945, c 210, §1, and C 3 2-25 2 and 25 3, L 1944, c 109, §§2 and 3

3A:2-28. Order to compel production of purported will. The county court of any county shall have jurisdiction to compel discovery as to the existence or whereabouts of any paper purporting to be a will of any decedent who died a resident of the county, which has not been offered for probate, and to require the paper to be lodged with the surrogate of the county for probate

Source 3 2-28 Further see Rule 5 3-8

3A:2-29. Allowances by superior or county court to widow or children pending contest over probate of will. The superior or county court wherein a contest is pending over the probate of any paper purporting to be a will may, on motion by the widow of the decedent, by any

of his children, or by any children of any of his deceased children, order the person having the custody of the decedent's estate to pay out of the income of the estate, pending the contest, such allowance for the support and maintenance of such widow or child or children as the court may deem just; and such further allowance out of the income, or, if need be, out of the corpus, of such estate as may be necessary to meet the expenses incurred or to be incurred in conducting the contest

To entitle a widow to the benefit of this section she must have been ceremonially married to the decedent and shall have been living with him as his wife at his death

Source, R S 3 2-29

3A:2-30. Blank See proposed additional legislation.

3A:2-31. Filing probate record with surrogate of any county. When a will devising real estate has been duly admitted to probate before any surrogate of this state or by the superior court or a county court, any person interested therein may file with the surrogate of any county a certified copy of the will, the complaint or application for probate, the proofs, the judgment or order for probate and the letters testamentary issued thereon. The surrogate shall thereupon record the same, which record, or a certified copy thereof, shall be received in evidence in any controversy respecting the title to real estate in that county as if the will had been originally admitted to probate before such surrogate.

Source C 2 1C-15, L 1948, c 364, p 1465, §15

3A:2-32

to

3A:2-36. Blank See proposed additional legislation.

3A:2-37. Probate of will of nonresident probated in another state or country. When any will of any person not resident in this state at his death shall have been admitted to probate in any state of the United States or other jurisdiction or country, the surrogate of any county may, except as stated in section 3A 1-4 of this title, admit it to probate for any purpose and issue letters thereon, provided the will is executed in accordance with the laws of this state

Source R S 3 2-37 to R S 3 2-40

3A:2-38. Recording of will of nonresident probated in another state or country. A copy of any will or of the record of any will of a decedent not resident in this state at his death, admitted to probate in any state of the United States or other jurisdiction or country, and of the certificate or judgment for probate, and if title to land of the decedent depends on the conveyance by an executor, administrator with the will annexed, substituted administrator with the will annexed, trustee or substituted trustee, of the record of the grant of letters testamentary thereon, or of administration, or substitutionary

administration, with the will annexed, or of a copy of such letters, attested and certified pursuant to the rules of the superior court, heretofore or hereafter filed and recorded in the office of the surrogate of any county in this state, shall have the same force and effect in respect to all real estate whereof the testator died seized, as if the will had been admitted to probate and the letters aforesaid had been issued in this state, provided it appears either from the deposition in the record or the attestation clause, or by a deposition taken under a commission or otherwise, that the will was executed in accordance with the laws of this state

All conveyances of such real estate heretofore or hereafter made by any executor, administrator with the will annexed, substituted administrator with the will annexed, trustee, substituted trustee, or the survivor or survivors of them, or by any devisee or persons claiming under such devisee shall be as valid as if such will had been admitted to probate and letters aforesaid had been issued in this state

Certified copies of such will, deposition, judgment for probate and letters, or of the record thereof, shall be received in evidence in all the courts of this state

Source. C 1C-16, L 1948, c 364, p 1465, §16

Note of Reporter The papers can be either attested and certified pursuant to Rule 3 44-1 or else, if they are recorded in the United States, exemplified and authenticated according to the acts of congress (28 U S C, §687)

C 2 1C-16 does not require the probate record to be filed in the county where the real estate is situated. The above statute continues this practice

3A:2-39. Blank.

3A:2-40. Blank.

3A:2-41. Probate of will of nonresident decedent not probated elsewhere. Where the will of any person not resident in this state at his death has not been admitted to probate in the state, jurisdiction or country in which he then resided and no proceeding is there pending for the probate of the will, and he was entitled at his death to real estate situate in any county of this state or personal estate or evidence of the ownership thereof situate therein at the time of probate, the superior court or the county court of the county may admit the will to probate and grant letters thereon.

Source R S 3 2-41 to R S 3 2-43 and C 3 2-45 1, L 1942, c 335, §1

3A:2-42. Blank.

3A:2-43. Foreign wills probated or recorded in state prior to July 4, 1888; record informal or lost. R. S. 3 2-45, saved from repeal [This statute provides that where any foreign will has been probated or recorded in this state prior to July 4, 1888, and such record is informal or cannot be found, an exemplified copy of the record may be filed and has the same effect as if the exemplification had remained on file continuously from the date of the foreign probate.]

3A:2-44. Recording of wills probated 100 or more years ago in another state or country. Laws 1948, c 364, p 1466, §17 (C 2 1C-17), saved from repeal [This act provides that where any will has been admitted to probate 100 years or more in another state or foreign country and the testator was at the time the will was made in the military or naval service of the United States, a copy of the will may be recorded in the surrogate's office wherein any lands devised may be situate, although the state or country named in the will as the testator's residence was not the state or country where the will was probated.]

3A:2-45. Wills probated 100 or more years ago; presumption of testator's competency. R S 3 2-12, saved from repeal [This statute provides that when 100 or more years have elapsed after the admission of a will to probate in any state or country, the testator is conclusively presumed competent, and if the will was made

while he was in U S military or naval service, it is valid notwithstanding it is not probated in the state or country named as the testator's residence.]

3A:2-46. Wills of residents who died before 1895 probated in other states; conveyances valid. Laws 1948, c 364, p 1467, §18 (C 2 1C-18), saved from repeal [This act provides that a copy of the will of any resident of this state who died prior to January 1, 1895, which has not been probated (or the probate thereof denied) in this state, but which has been probated in another state in the United States may be filed in the surrogate's office of any county for the purpose of making title to real estate, provided it is duly exemplified and it appears from the attestation clause or the decree of probate or the proof that the will was executed as required by the laws of this state. The record of the will shall have the same effect in respect to real estate as if the will had been probated in this state.]

Chapter 3 and Chapter 4. Blank.

Chapter 5. UNIFORM SIMULTANEOUS DEATH ACT.

Section	
3A 5-1	Disposition of property of persons dying simultaneously
3A 5-2	Division of property, 2 or more beneficiaries
3A 5-3	Division of property, joint tenants or tenants by entirety
3A.5-4	Distribution of proceeds of life or accident policies

Section	
3A 5-5	Act not retroactive
3A 5-6	Inapplication in certain cases
3A 5-7	Construction and interpretation
3A 5-8	Citation
3A 5-9	Repeal of inconsistent acts
3A 5-10	Partial invalidity

3A:5-1. Disposition of property of persons dying simultaneously. Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this act.

Source 3 5A-1, L 1947, c 384, p 1219, §1

Note of Reporter. Title of act. An act providing for the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously, and to make uniform the law with reference thereto. L 1947, c 384, p 1219

3A:5-2. Division of property, 2 or more beneficiaries. Where 2 or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

Source 3 5A-2, L 1947, c 384, p 1219, §2

3A:5-3. Division of property, joint tenants or

tenants by entirety. Where there is no sufficient evidence that 2 joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than 2 joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

Source 3 5A-3, L 1947, c 384, p 1219, §3

3A:5-4. Distribution of proceeds of life or accident policies. Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

Source 3 5A-4, L 1947, c 384, p 1219, §4

3A:5-5. Act not retroactive. This act shall not apply to the distribution of the property of a person who had died before it takes effect.

Source 3 5A-5, L 1947, c 384, p 1219, §5

3A:5-6. Inapplication in certain cases. This act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, wherein

provision has been made for distribution of property different from the provisions of this act
Source 3 5A-6, L 1947, c 384, p 1220, §6

3A:5-7. Construction and interpretation. This act shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it
Source 3 5A-7, L 1947, c 384, p 1220, §7

3A:5-8. Citation. This act may be cited as the uniform simultaneous death act
Source 3 5A-8, L 1947, c 384, p 1220, §8

3A:5-9. Repeal of inconsistent acts. All laws or parts of laws inconsistent with the provisions of this act are hereby repealed
Source 3 5A-9, L 1947, c 384, p 1220, §9

3A:5-10. Partial invalidity. If any of the provisions of this act or the application thereof to any persons or circumstances is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable
Source 3 5A-10, L 1947, c 384, p 1220, §10

Subtitle 3. ADMINISTRATION BY EXECUTORS, ADMINISTRATORS, GUARDIANS AND TRUSTEES.

Chapter 6. DEFINITIONS AND CONSTRUCTION IN GENERAL.

Section

3A 6-1 Definitions

3A:6-1. Definitions. As used in this title
a "Fiduciary" includes executors, guardians, trustees, general administrators of an intestate, administrators with the will annexed, substituted administrators, substituted administrators with the will annexed, and, unless restricted by the subject or context, temporary administrators, administrators pendente lite, administrators ad prosequendum, administrators ad litem and other limited administrators

b "Cofiduciary" means 1 or more of 2 or more fiduciaries jointly serving in fiduciary capacity

c "Guardian" includes general, special, limited and testamentary guardians

d "Orphan" means a minor whose father is dead

e "Testamentary guardian" means a guardian designated by will or deed

f "Testamentary trustee" means a trustee

Section

3A 6-2 Jurisdiction of superior court not affected

designated by will or appointed to exercise a trust created by will

g "Mental incompetent" means a person who as a result of idiocy, insanity, lunacy, unsoundness of mind, or habitual drunkenness, is incapable of governing himself and managing his affairs

h The terms "mental incompetency" and "mentally incompetent" refer to the state or condition of a "mental incompetent" as defined in this section

Source R S 3 6-1

3A:6-2. Jurisdiction of superior court not affected. The provisions of this subtitle shall not be construed as intended in any way to affect, impair or limit the plenary original jurisdiction of the superior court given to it by the constitution of New Jersey

Source 3 6-2

Chapter 7. APPOINTMENT AND GENERAL POWERS OF FIDUCIARIES.

Section

Article 1 Executors and Administrators

- 3A 7-1 Will of decedent to be observed
- 3A 7-2 Appointment of debtor as executor, debt not discharged
- 3A 7-3 Grant of letters of administration by surrogate
- 3A 7-4 Letters of administration, to whom granted
- 3A 7-5 Spouse entitled to assets without administration where they do not exceed \$500
- 3A 7-6 Blank
- 3A 7-7 Discharge of persons making payments or delivering assets
- 3A 7-8 Acts of administrator before notice of will
- 3A 7-9. Ancillary administration on estate of non-resident intestate
- 3A 7-10 Administration by creditor

Section

- 3A 7-11 Record of foreign appointment of administrator in office of surrogate to show authority, evidentiary effect
- 3A 7-12 Executors de son tort
- 3A 7-13 Administration ad prosequendum on death by wrongful act
- 3A 7-14 Blank
- 3A 7-15 Duty to apply in this state for original letters of administration
- 3A 7-16 Letters of trusteeship under a will

Article 2 Guardians for Minors

A Testamentary Guardians

- 3A 7-17 Power to designate testamentary guardian
- 3A 7-18 Consent of surviving parent, formal requisites

Section	
3A 7-19	Appointment of testamentary guardian by surviving parent
3A 7-20	Bond of testamentary guardian
3A 7-21	Determination as to fitness of testamentary guardian
3A 7-22	General powers and duties of a testamentary guardian.
	B Special and Limited Guardians
3A 7-23	Special guardian for property of nonresident minor
3A 7-24	Letters of limited guardianship
3A 7-25	Special guardian for minor over 14, consent to enlistment, bond, fees
	C General Guardians for Minors and Minor Guardians
3A 7-26	Jurisdiction of surrogate to appoint guardian of infant
3A 7-27	Guardian for orphan under 14
3A 7-28	Guardian when next of kin of orphan under 14 reside outside state
3A 7-29	Guardian for estate of minor possessed of property during lifetime of parents
3A 7-30	Guardian unnecessary where assets under certain amounts
3A 7-31	Filing of consent, discharge of persons making payments
3A 7-32	Guardian for child of absconding or absent parent
3A 7-33	Powers of guardian appointed for child of absconding or absent parent
	Article 3 Mental Incompetency.
3A 7-34	Issue of mental incompetency triable without jury unless jury is demanded
3A 7-35	Appointment and duties of guardian.
3A 7-36	Additional powers of guardians
3A 7-37.	Action against mental incompetent when guardian newly appointed, leave of court required
3A 7-38.	Descent and distribution of intestate property
3A 7-39	Descent of personalty of mental incompetent as real estate in certain cases
3A 7-40	Control of drunkard's property vested in guardian.
3A 7-41	Safe-keeping of a habitual drunkard
3A 7-42	Return to competency, restoration of estate
3A 7-43.	Appointment of guardian for nonresident incompetent

Article 1. EXECUTORS AND ADMINISTRATORS.

3A:7-1. Will of decedent to be observed. Where administration is granted with the will annexed, the will of the decedent therein expressed shall be observed and performed
Source R S 3 7-3

3A:7-2. Appointment of debtor as executor; debt not discharged. The appointment of a debtor as executor shall not, unless otherwise expressed in the will, be construed so as to discharge the executor from payment of the debt, but the debt shall be considered an asset in the hands of the executor and shall be accounted for in the same manner as any other part of the personal estate.
Source. R S 3 7-5

3A:7-3. Grant of letters of administration by surrogate. Except as stated in section 3A 1-4 of this title, the surrogate of the county in which a decedent resided at the time of his death shall

Section	
3A 7-44	to
3A 7-60	Blank

Article 4 New, Additional, Substituted and Succeeding Fiduciaries

3A 7-61	Appointment of substituted administrators
3A 7-62	Powers of substituted administrator
3A 7-63	Vacancy in guardianship, substituted guardian
3A 7-64	Joint tenancy in trusteeship
3A 7-65	Trustee's death or failure to act, appointment of new trustee by court
3A 7-66	Blank
3A 7-67	Vacancy in trusteeship upon discharge or removal
3A 7-68	Powers of new, substituted or additional trustees
3A 7-69	Survivorship and succession among co-fiduciaries
3A 7-70	Appointment of substituted fiduciary in place of one deceased or removed
3A 7-71	Blank
3A 7-72	Powers and duties of substituted fiduciary
3A 7-73	Actions of succeeding or substituted fiduciary to recover assets misapplied by predecessor
3A 7-74	Removed or discharged fiduciary to deliver assets to successor
3A 7-75	Penalty for failure of removed or discharged fiduciary to account or deliver assets
3A 7-76	Account of removed or discharged fiduciary
3A 7-77	Appointment of substitute for fiduciary engaged in war service
3A 7-78	Cofiduciaries, terms of instrument
3A 7-79	Substituted fiduciary bond
3A 7-80	Substituted fiduciary powers and duties
3A 7-81	Reinstatement of original fiduciary accounting
3A 7-82	Powers and duties of reinstated fiduciary.
3A 7-83	Commissions, apportionment
3A 7-84	More than 1 substituted fiduciary
3A 7-85	"Engaged in war service" defined

Article 5 Continuation of Decedent's Business

3A 7-86	Application to county court to continue business of decedent
---------	--------------------------------------------------------------

have the power and authority to grant letters of administration on the estate of such decedent, in all cases where administration may legally be granted.

Source R S 3 7-5 1

3A:7-4. Letters of administration; to whom granted. If any person dies intestate, administration of the personal estate of such intestate shall be granted to the surviving spouse of such intestate, if he or she will accept the same, and, if there be no such person, then to the next of kin of such intestate, or some of them, if they or any of them will accept the same, and, if none of them will accept the same, then to such other proper person as will accept the same.

If such intestate leaves no relations justly entitled to the administration of his personal estate, or if his next of kin shall not claim the administration within 40 days after the death of such intestate, the superior court or surrogate may

grant letters of administration to any fit person applying therefor.

Source. R S 3 7-6

3A:7-5. Spouse entitled to assets without administration where they do not exceed \$500. Where the total value of the real and personal assets of the estate of an intestate will not exceed \$500, the surviving spouse upon the execution of an affidavit before the surrogate of the county where the intestate resided at his death, or if then nonresident in this state, where any of the assets are located, or before the superior court, or if the affiant is without the state before any person authorized to take qualifications of administrators, shall be entitled absolutely to all the real and personal assets without administration and free from all debts of the intestate. The affidavit shall state that the affiant is the surviving spouse of the intestate, and shall set forth the residence of the intestate at his death, and specify the nature, location and value of the intestate's real and personal property and that the value of the intestate's real and personal property will not exceed \$500. The affidavit shall be filed and recorded in the office of the surrogate stated or, if the proceeding is before the superior court, then in the office of the clerk of that court.

Source R S 3 7-8, as am L 1950, c 125, p , §1

Note of Reporter. As to section 3A 7-6, see proposed additional legislation.

3A:7-7. Discharge of persons making payments or delivering assets. Any bank, building and loan association, or other corporation or any person, association or society, which pays or delivers any assets of the intestate to the person executing an affidavit under section 3A 7-5 or 3A:7-6 of this title, upon presentation of a copy of the affidavit marked a true copy by the surrogate or the clerk of the superior court, shall be forever discharged from all claims by any administrator of the intestate who may be appointed or by any other person, as to the assets so paid or delivered; and thus, notwithstanding that the total value of the real and personal assets does in fact exceed \$500 or that the statements in the affidavit are erroneous or that a consent required by section 3A 7-6 has not been obtained.

Source. C 3 7-8 2, L 1941, c 382, p 990, §2

3A:7-8. Acts of administrator before notice of will. Lawful acts performed in good faith by an administrator before notice of a will and purchases made of him in good faith before such notice shall remain valid and shall not be impeached or altered by an executor, on such will afterwards appearing.

Nothing in this section shall be construed to relieve such administrator of any liability to the executor under the will for property unadministered or maladministered.

Source. R S 3 7-9

3A:7-9. Ancillary administration on estate of nonresident intestate. Where a nonresident dies intestate seized of real property in this state or possessed of choses in action or other personal property therein, or where the evidence of his choses in action shall be in the hands of any resident of this state, the surrogate of the county wherein any of such real property, choses in action or evidence thereof or other personal property, is situate shall, in an action upon satisfactory proof of intestacy, issue letters of administration upon the estate of the nonresident to the administrator of his estate or, on such notice to the administrator as the surrogate shall require, to any person who would be entitled to administration if the intestate had been a resident at his death

Source R S 3 7-10

3A:7-10. Administration by creditor. If an executor or administrator of a nonresident decedent fails to apply in this state for letters testamentary or of administration within 60 days next after the death of the decedent and there is, real property, choses in action or other personal property of the decedent within this state, or the evidence of choses in action in the hands of a resident of this state, the surrogate of a county wherein any such real property, choses in action or evidences thereof or other personal property, is situate may, in an action by any person resident or nonresident, alleging himself to have a debt or legal claim against the decedent which by the law of this state survives against his representatives, issue letters of administration, with the will annexed or otherwise as the case may require, to some fit person to be designated by the surrogate.

Prior to an appointment pursuant to this section such notice shall be given the foreign executor or administrator as the surrogate shall prescribe.

Source R S 3 7-11

3A:7-11. Record of foreign appointment of administrator in office of surrogate to show authority; evidentiary effect. If any person shall desire to have the appointment of any administrator appointed in another state of the United States recorded in this state for the purpose of manifesting the authority of such administrator to release or discharge real estate in this state from any mortgage, judgment, other lien or encumbrance which was held by his intestate, the surrogate of any county wherein such real estate is situate, may, upon the presentation to him of an exemplified copy of the record of the appointment of such administrator, record the same and file such copy in his office, and such record or certified copies thereof shall be received as evidence in all courts of this state.

Source R S 3 7-11 1

3A:7-12. Executors de son tort. Whereas it is sometimes practiced to the defrauding of cred-

itors, that such persons as are entitled to the administration of the goods of others dying intestate, if they require it, will not accept the same, but suffer or procure the administration to be granted to others of indigent circumstances, from whom they, or others, by their means, by deeds of gifts, or by letters of attorney, obtain the estate of the intestate into their hands, and yet be not subject to the payment of the debts of the intestate, and so the creditors cannot have or recover their just debts and demands, therefore, every person who shall obtain, receive and have, any goods or debts of any person dying intestate, or a release, or other discharge of any debt or duty that belonged to the intestate, upon any fraud as aforesaid, or without such valuable consideration, as shall amount to the value of such goods or debts, or near thereabouts, except it be in or towards satisfaction of some just debt, of the value of the same goods or debts, to him owing by the intestate at the time of his decease, shall be charged and chargeable as executor of his own wrong so far only, as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting, nevertheless, allowance of all just debts, upon good consideration, and without fraud, owing to him by the intestate, at the time of his decease, and all payments made by him which lawful executors or administrators might and ought to have and pay by the laws of this state

Source R S 3 7-12

3A:7-13. Administration ad prosequendum on death by wrongful act. Except as stated in section 3A 1-4, the surrogate of the county wherein an intestate resided at his death, or, if the intestate resided outside the state, the surrogate of the county wherein the accident resulting in death occurred, may grant letters of administration ad prosequendum to the person entitled by law to general administration. An administrator ad prosequendum shall not be required to give bond.

This section shall not affect the right of the superior court to grant letters of administration ad prosequendum.

Source R S 3 7-13

3A:7-14. See proposed additional legislation

3A:7-15. Duty to apply in this state for original letters of administration. When an intestate is domiciled in any county of New Jersey at his death, it shall be the duty of any person desiring original letters of administration upon his estate to make application therefor to the surrogate of that county or to the superior court of this state.

Any person having knowledge of the grant in a foreign jurisdiction of original letters of administration upon the estate of a person dying domiciled in New Jersey, shall give information thereof to the county court of the county stated

or to the superior court of this state, and the court so informed may direct the clerk of the court to issue and have served subpoenas or an order to show cause requiring the appearance before it, at a specified time, of any persons having any interest in the estate, and commanding them to abide the order of the court. The matter of the grant of letters of administration shall be wholly within the jurisdiction of such court.

Source C 3 7-13 1 to 13 3, L 1939, c 121, p 430, §1, suppl Title 3, L 1939, c 121, p 430, §2, suppl Title 3

3A:7-16. Letters of trusteeship under a will. A testamentary trustee or substituted testamentary trustee, before exercising the authority vested in him by virtue of any last will and testament which shall have been admitted to probate by the superior court, any county court or surrogate of this state, shall obtain letters of trusteeship from said court or surrogate.

Source C 3 7-13 4

Article 2 GUARDIANS FOR MINORS.

A TESTAMENTARY GUARDIANS

3A:7-17. Power to designate testamentary guardian. Subject to the provisions of section 3A 7-18 of this title, either parent, whether over or under the age of 21 years, may, by deed duly acknowledged or proved or by will duly executed, appoint on his death a guardian of the person and estate of any of his children, including children en ventre sa mere, who are under the age of 21 years and unmarried at his death.

The appointment under this section or section 3A 7-19 of this title may be for the minority of the child or any portion thereof, and either in possession or in remainder.

Source R S 3 7-14

3A:7-18. Consent of surviving parent; formal requisites. When the other parent survives the appointing parent, the appointment shall be effective only when the surviving parent, at or before the issuance of the letters, consents thereto in writing and signs and acknowledges the consent in the presence of 2 witnesses present at the same time who subscribe their names as witnesses thereto in his presence.

Source R S 3 7-15

Note of Reporter R S 3 7-15, from which this section is derived, contains the following provision:

"Such consent shall, at the time the will making the appointment is admitted to probate, be proved to have been so given and acknowledged."

This sentence, though not entirely clear, is construed to enable the surviving spouse to sign the consent at the time the will is admitted to probate. Furthermore it is construed as rendering the appointment nugatory if the consent is not proven at the time of probate. Section 3A 7-18 changes this by requiring the surviving spouse to give his consent "at or before the issuance of the letters" of testamentary guardianship.

3A:7-19. Appointment of testamentary guardian by surviving parent. If no guardian has been appointed pursuant to sections 3A 7-17 and

3A:7-18 of this title, the surviving parent, whether over or under the age of 21 years, may, by his will duly executed, appoint a guardian of the person and estate of any of his children, including children en ventre sa mere, who are under the age of 21 years and unmarried at his death
Source R S 3 7-16

3A:7-20. Bond of testamentary guardian. Before exercising authority and control over property of his ward, a testamentary guardian shall give bond in accordance with section 3A 8-1 of this title, unless it is otherwise directed by the will of the parent appointing the guardian, provided, notwithstanding any such direction, where the ward is or shall be entitled to property from any source, other than the said parent or other than any policy of life insurance upon the life of the said parent, the guardian, before he exercises any authority or control over the same, shall give bond with respect to the said property in accordance with the said section
Source R S 3 7-18, as am L 1945, c 119

3A:7-21. Determination as to fitness of testamentary guardian. If a will appointing a testamentary guardian is to be probated in the surrogate's or county court of any county, the county court of the county may, before the probate in an action brought upon notice to the guardian named in the will, inquire into the present custody of the minor, and make such order touching the testamentary guardianship as may be for the best interest and welfare of the minor
Source R S 3 7-19

Note of Reporter Under R S 3 7-19 the superior court and the county court are given the authority above stated. However, the superior court's jurisdiction is plenary so that it may act after probate as well as before probate, and it seems more confusing than helpful to include the superior court in the above provision

3A:7-22. General powers and duties of a testamentary guardian. The appointment of a testamentary guardian for a child shall be good and effectual against any other person claiming the guardianship over or custody of the child

The guardian may take into his custody for the use of the child the profits of the child's real estate and the custody and management of the personal estate of the child until the child attains the age of 21, or for any less time, in accordance with his appointment, and may bring any action in relation thereto which any other guardian might do

Where any person wrongfully takes away or detains the child, the testamentary guardian may maintain a civil action against that person for the recovery of the child and may obtain damages therefor for the use of the child
Source R S 3 7-20

B SPECIAL AND LIMITED GUARDIANS

3A:7-23. Special guardian for property of non-resident minor. The superior court may appoint a special guardian for real and personal property,

within this state, of any nonresident minor, and the county court or surrogate shall have concurrent authority to appoint a special guardian for any such property within the county

The court appointing him, unless he was appointed by the surrogate of any county, and in that case the county court of the county, shall, with respect to such property, have the same authority and control over him which it would have over a general guardian of a resident minor. In any case not provided for by statute, it shall take such action in the matter as it shall deem most for the advantage of the minor
Source R S 3 7-22

Note of Reporter R S 3 12-1 (3A 12-1) provides for the removal of a special guardian, and R S 3 7-63 (3A 7-63) provides for the appointment of a substituted special guardian

3A:7-24. Letters of limited guardianship. The superior court, or the county court or surrogate of the county where any minor resides, may limit and restrict letters of guardianship to a particular fund or a particular portion of the property or estate of the minor, and in such cases the authority and duty of the guardian shall be limited to receiving and administering the fund or particular portion of the property and estate of the minor as is mentioned in the letters of guardianship

In all other respects such limited and restricted guardianships shall be subject to the laws of this state applicable to general guardianships. No such limited guardian shall be appointed under the provisions of this section if there is a general guardian for such minor legally qualified and acting on his behalf in this state
Source R S 3 7-23

3A:7-25. Special guardian for minor over 14; consent to enlistment; bond; fees. When any minor over the age of 14 years desires to enlist in the armed forces of the United States in time of war and has no parent or guardian entitled to his custody and control available to sign the written consent required for such enlistment, letters of special guardianship may be granted by the superior court, county court or surrogate, empowering the special guardian to give his written consent to such enlistment but limiting his authority and duty to that purpose. The guardian shall give such consent only if he deems the enlistment advisable. No bond shall be required from such guardian, and no fee or charge shall be collected by the clerk of the county or superior court or by the surrogate in connection with the action for the appointment of the guardian
Source C 9 2-12, L 1942, c 329, §1

Note of Reporter The words "military or naval service of the United States" appearing in C 9 2-12 have been changed to "armed forces of the United States". This will include the air and coast guard services

The provision in C 9 2-12 as to the manner in which the petition is to be executed and acknowledged has been transferred to new Rule 3 90-2

C GENERAL GUARDIANS FOR MINORS
AND MINOR ORPHANS

3A:7-26. Jurisdiction of surrogate to appoint guardian of infant. In the matter of the appointment of guardians for persons under 21 years of age the surrogate of the county in which the minor or orphan may reside or if he is a non-resident, then the county in which he may have real or personal estate shall, except as stated in section 3A 1-4 of this title, have and exercise the same powers as the superior court.

Source R S 3 7-23 1

3A:7-27. Guardian for orphan under 14. In an action for the appointment of a guardian for an orphan under the age of 14 years the superior court, county court or surrogate of any county, upon inquiry into the circumstances of the case, may admit the mother, if she will accept, and if there be no such mother, then the next of kin or some of them, if they or any of them will accept the same and, if none of them will accept the same, then such other proper person as will accept the same, to the guardianship of the orphan until he attains the age of 14 years and chooses, in an action for that purpose, another guardian for himself or until, upon good cause shown, the superior court or county court of the county substitutes another guardian

Until such time the bond of the guardian so admitted shall remain in full force.

Source. R S 3 7-25

3A:7-28. Guardian when next of kin of orphan under 14 reside outside state. When it shall be made to appear, to the satisfaction of the superior court, county court or surrogate, that the next of kin of an orphan under the age of 14 years and residing in this state, do not reside within this state, the court or surrogate may take such action in respect to the appointment of a guardian or guardians for the minor as shall be to his advantage.

Source R S 3 7-26

3A:7-29. Guardian for estate of minor possessed of property during lifetime of parents. If any minor shall become seized or possessed of or entitled to real or personal estate, the superior court, or county court or surrogate of the county wherein the minor resides or such real or personal estate may be, may appoint either parent of the minor or other suitable person, guardian of the minor's estate

Source R S 3 7-28

3A:7-30. Guardian unnecessary where assets under certain amounts. In all cases where the value of the real estate of any minor shall not exceed \$100 and the value of the personal estate of any minor shall not exceed \$500, either parent of such minor or a person standing in loco parentis to such minor shall be entitled to receive the same for the use and benefit of such minor without being appointed guardian or en-

tering into bond, upon the execution of an affidavit before the surrogate of the county where the minor resides or if nonresident in this state, where any of the assets are located, or before the superior court, or without the state before any person authorized to take acceptances of guardianship, setting up that the value of such minor's real estate will not exceed \$100, the said minor's personal estate will not exceed \$500, stating the residence of the minor and specifying the nature, location and value of said assets and setting up that.

a affiant is such minor's parent and that the other parent has consented to such receipt, or is dead, or has absconded, or has absented himself leaving the minor without sufficient provisions for maintenance and education, or is in the armed forces of the United States, or is not present in the continental United States, or

b affiant is a person standing in loco parentis to such minor, and that said minor's parents have consented to such receipt, or are dead, or have absconded, or have absented themselves leaving the minor without sufficient provision for maintenance and education, or are in such armed forces, or are not present in the continental United States, as the case may be.

Source. R S 3 7-29, as am L 1945, c 96, p 437, §1

3A:7-31. Filing of consent; discharge of persons making payments. A consent, where required by section 3A:7-30 of this title, shall be in writing, and it and the affidavit shall be filed and recorded in the office of the surrogate or if the proceeding is before the superior court, then in the office of the clerk of the superior court, and thereupon the affiant shall have all the rights, powers and duties of a guardian duly appointed for the estate of the minor and as such, may be sued and required to account as if he had been appointed guardian by the surrogate or superior court, as the case may be

Any bank, building and loan association or other corporation or any person, association or society which pays or delivers any assets of the minor to such parent or person standing in loco parentis, as the case may be, upon presentation of a copy of the affidavit made as stated in section 3A:7-30 of this title, marked a true copy by the surrogate, shall be forever discharged from all claims by any guardian who may thereafter be appointed or by any other person, for the assets so paid or delivered, and this, notwithstanding that the value of the assets do exceed the amounts stated or that the statements in the affidavit are erroneous or that a consent required has not been obtained.

Source R S 3 7-29

3A:7-32. Guardian for child of absconding or absent parent. If a resident of this state has or shall abscond or absent himself therefrom for a period of 2 years, leaving a child under the age of 21 without sufficient provision for maintenance

and education, the superior court or the county court or surrogate of the county wherein the child resides, may appoint a guardian for his person and estate. The superior court or if the appointment is made by a surrogate or county court of a county, then the county court of the county may revoke the appointment when it shall appear proper.

Source R S 3 7-30

3A:7-33. Powers of guardian appointed for child of absconding or absent parent. A guardian, appointed pursuant to section 3A 7-32 of this title, shall have the same rights, powers, duties and liabilities as other general guardians, which shall continue during the minority of the child or until his authority is revoked, notwithstanding any right or claim of authority of the parent.

Such guardian may do all acts for the maintenance and education of the child and the disposition of his time and services which the parent could lawfully do

Source R S 3 7-31

Article 3 'MENTAL INCOMPETENCY

3A:7-34. Issue of mental incompetency triable without jury unless jury is demanded. In civil actions or proceedings for the determination of mental incompetency or for the appointment of a guardian for an alleged mental incompetent, the trial of the issue of mental incompetency may be had without a jury pursuant to rules of the supreme court, unless a trial by jury is demanded by the alleged mental incompetent or someone on his behalf

Source. R S 3 7-34 1, as am L 1948, c 388, p 1574, §1

3A:7-35. Appointment and duties of guardian. The superior court or the county court may, pursuant to rules of the supreme court, appoint guardians and substituted guardians of mental incompetents. Any such guardian shall provide for the care and safekeeping of the mental incompetent and shall possess and apply his real and personal property so that the mental incompetent may be properly supported out of his personal property and the profits of his real property, and that no waste or destruction of his real property be done or permitted. The real property shall in no wise be aliened except pursuant to the law of this state

Source R S 3 7-41

3A:7-36. Additional powers of guardians. The guardian may, upon the direction of the court in which he was appointed, pursuant to rules of the supreme court sell, mortgage, exchange or partition the estate of the mental incompetent, carry on trade or business, grant leases and accept surrender of leases of property and perform any contract relating to his estate.

Source R S 3 7-42

3A:7-37. Action against mental incompetent when guardian newly appointed; leave of court required. No action shall be brought or main-

tained against a mental incompetent within 1 month after appointment of a guardian except by leave of the court wherein the action is to be brought or maintained

Source R S 3 7-34

3A:7-38. Descent and distribution of intestate property. If the mental incompetent dies intestate or without any will except such as was executed pending proceedings which ultimately resulted in the judgment of incompetency, his real estate shall go to his heirs and the residue of his personal estate, after payment of debts, shall go to and be distributed according to law among his next of kin

Source R S 3 7-41, 1947 constitution, article VI, section IV, paragraph 1, C 2 1B-24, L 1948, c. 365, p 1475, §24

3A:7-39. Descent of personalty of mental incompetent as real estate in certain cases. When any portion of a mental incompetent's real estate shall have been sold during his incompetency and there remains at his death personal estate in the hands of the guardian more than sufficient to pay the just debts of such mental incompetent so much of the personal estate remaining as shall equal in value the real estate so sold, shall be deemed real estate for purposes of descent and distribution

Source R S 3 7-49

3A:7-40. Control of drunkard's property vested in guardian. After a person has been determined to be a mental incompetent due to habitual drunkenness, and until the proceedings for such determination have been terminated, such person shall be divested of all power and control over, and legal estate in, his real and personal property and the same shall be vested in his guardian in trust for him, and, except as otherwise provided by law, no contracts made by him shall bind either his person or estate

Source R S 3 7-43

3A:7-41. Safe-keeping of an habitual drunkard. On application of the guardian of a mental incompetent found such by reason of habitual drunkenness, the court wherein said guardian was appointed may make such order for the safe-keeping of such mental incompetent as he may deem necessary with a view to his reformation, and, from time to time, alter or modify the same. The court may direct the guardian to place his ward in a proper state institution or in such other proper retreat as he may order

When a direction is made to place such mental incompetent in a state institution, the guardian may be required to give security, in such amount and form as the court shall direct, for the payment of the expenses of keeping such mental incompetent therein

Source R S 3 7-45

3A:7-42. Return to competency; restoration of estate. The superior court or county court may, pursuant to rules of the supreme court, super-

sede all proceedings adjudging a person to be a mental incompetent and appointing a guardian for him and restore the estate of the mental incompetent to him if the court upon taking proof, is satisfied that he is restored to sound reason and is fit to govern himself and manage his affairs, or, in the case of a mental incompetent found such by reason of habitual drunkenness, that he has reformed and become habitually sober and has continued so for 1 year next preceding the filing of a complaint for the determination of return to competency

Source R S 3 7-46

3A:7-43. Appointment of guardian for non-resident incompetent. When a nonresident has been or shall be found to be a mental incompetent under the laws of the state or country wherein he resides, the superior court or the county court of the county wherein he has real or personal property may, pursuant to rules of the supreme court, appoint a guardian of the mental incompetent

Source R S 3 7-50 to R S 3 7-52

3A:7-44

to

3A:7-60. Blank

Article 4 NEW, ADDITIONAL, SUBSTITUTED AND SUCCEEDING FIDUCIARIES

3A:7-61. Appointment of substituted administrators. When a sole or sole surviving or remaining executor or administrator, with or without the will annexed, dies or is removed or discharged by a court of competent jurisdiction after qualifying and entering upon the duties of his office but before the completion thereof, the vacancy so created shall, except as hereinafter in this section provided, be filled by the appointment of a fit person to exercise the vacated office, such person to be denominated substituted administrator with the will annexed or substituted administrator, as the case may be

The appointment shall be made by the issuance of letters of substitutionary administration, with or without the will annexed as the case may be, by the surrogate of the proper county or the superior court in the manner and upon the conditions prescribed for granting letters of administration to the first administrators in other cases

Appointment of a substituted administrator shall not be required if the unadministered assets of the first intestate or testator consist of money on deposit in a bank or trust company not exceeding \$100, in which event it shall be lawful for the county court, in an action brought by any party in interest, to authorize such bank or trust company to distribute to the persons entitled by law to receive such assets, the amount thereof each is entitled to receive, and payments made pursuant to such authority shall release such bank or trust company from any claim of, or liability to, any person interested in such estate

Source R S 3 7-61.

3A:7-62. Powers of substituted administrator.

A substituted administrator with or without the will annexed shall be entitled to demand and receive the whole of the personal estate of his decedent, except such portion thereof as shall have been properly and justly paid out and distributed. He may sue for and recover all such assets, or their equivalent whether legal or equitable, from any person, his heirs or personal representatives, chargeable therewith, and in like manner charge his predecessor in office for any breach of trust or maladministration and shall in any such litigation represent the creditors and all persons beneficially interested in the estate

Such substituted administrator shall have generally all the rights and powers and be subject to the same duties and liabilities as the original executor or administrator, but no substituted administrator with the will annexed shall exercise any powers of sale as to real estate conferred by the will upon the executor as such or upon the executor as trustee except as authorized by section 3A 17-13 of this title

Source R. S 3 7-62

3A:7-63. Vacancy in guardianship; substituted guardian. A vacancy in a guardianship shall be deemed to arise when a sole or sole surviving or remaining guardian dies or is removed or discharged after entering upon but before completing the duties of his office

If letters were granted to him by the surrogate or county court of any county, then except as stated in section 3A 1-4 of this title, the surrogate of the county shall have jurisdiction to fill the vacancy by the appointment of a substituted guardian. In other cases the superior court may appoint a substituted guardian

Source R S 3 7-63, as am L 1941, c 323, p 864, §1

Note of Reporter The only change made by the proposed statute is to require an action for the appointment of a substituted guardian where a guardian has been removed or discharged, to be instituted in the surrogate's court. This conforms with the practice on the appointment of a substituted administrator as provided by R S 3A 7-61

3A:7-64. Joint tenancy in trusteeship. All estates heretofore or hereafter granted or devised to trustees shall be construed to have vested and to vest an estate of joint tenancy in such trustees

When a trustee is removed a conveyance or devise from the removed trustee to the old and new trustees or to the new trustees shall vest in the old and new trustees or the new trustees an estate in joint tenancy, notwithstanding any want of unity.

When a trustee dies or resigns or his office becomes vacant for any cause, and a new trustee is appointed, the surviving trustees, if any there be, and the new trustee shall hold the trust estate as joint tenants, and a conveyance of a right and interest in the trust estate from the surviving trustees, to the new trustee shall vest in all the trustees an estate in joint tenancy, notwithstanding any want of unity

When a new, additional or substituted trustee is appointed by a court of competent jurisdiction or becomes such by operation of the terms of a will or other instrument or by operation of law, title to the trust assets shall forthwith vest in all the trustees in office including the new, additional or substituted trustee as joint tenants
Source R S 3 7-64

3A:7-65. Trustee's death or failure to act; appointment of new trustee by court. When a trustee appointed by will probated in the surrogate's or county court of any county or a trustee appointed under a trust inter vivos as to real or personal property situate in any county fails or refuses to act or dies before the execution or completion of the trust committed to him, or absconds or removes from this state, is adjudicated a mental incompetent or becomes in any manner legally incapable of executing the trust, the superior court or the county court of the county may remove the trustee, if he be alive, and appoint a suitable person or persons to execute the trust, and the trustee or trustees so appointed shall be entitled to the trust estate as fully and in the same manner as the original trustee was and shall have all the power of the original trustee.

Source R S 3 7-65

3A:7-66. Blank

3A:7-67. Vacancy in trusteeship upon discharge or removal. When a sole or surviving trustee is removed or discharged by the superior court or county court or when all the trustees in office are removed or discharged before the completion of the trust, the court shall appoint a fit person or persons to fill the vacated office
Source R S 3 7-67

3A:7-68. Powers of new, substituted or additional trustees. A duly appointed new, substituted or additional trustee shall have the same power and discretion with respect to the investment, management, conversion, sale or other disposition of the trust estate, whether real or personal, as was given to or vested in the original trustee or trustees named in or appointed by the will or other instrument creating or continuing the trust, notwithstanding such power or discretion may be directed by the will or other instrument to be exercised at the discretion of such original trustee or trustees unless the power or discretion of the original trustee or trustees is expressly prohibited by the will or other instrument to any new, substituted or additional trustee

Source R S 3 7-68

3A:7-69. Survivorship and succession among cofiduciaries There shall be survivorship and succession between and among cofiduciaries and if there survives or remains at least 1 fiduciary qualified to act, no substituted fiduciary need be appointed to act in the place of any cofiduciary who may have died or may have been

removed or discharged or otherwise disabled to act The surviving fiduciary or cofiduciaries shall proceed with the duties of the office and shall be entitled to the property and assets, and to sue for and recover the same, in the same manner as if such remaining fiduciary or cofiduciaries had been solely appointed to such office

Source R S 3 7-69

3A:7-70. Appointment of substituted fiduciary in place of one deceased or removed. A substituted fiduciary may be discharged or removed in the same manner and for the same causes as an originally named or appointed fiduciary, and, upon the death or removal of a substituted fiduciary, a substituted fiduciary may be appointed in his stead with the same powers, authority, duties and liabilities as his predecessor in office

Source R S 3 7-70

3A:7-71. Blank

3A:7-72. Powers and duties of substituted fiduciary. A fiduciary substituted for a fiduciary removed or discharged by any court may demand, receive and recover the property and assets of the estate, and maintain all proper actions for the recovery thereof, and do all acts necessary for the administration and settlement of the estate and execution of the powers and performance of the trusts contained in the will or other instrument, in the same manner and to the same effect as if he had been appointed administrator or guardian in the first instance or named as executor or trustee in the will or other instrument, as the case may be Such fiduciary shall in the same manner be liable for any neglect or failure to perform the duties of his appointment, and shall be subject in all respects to the orders of the court wherein he receives his appointment

Source R S 3 7-72

3A:7-73. Actions of succeeding or substituted fiduciary to recover assets misapplied by predecessor. A fiduciary appointed in the place of a fiduciary removed or discharged by any court, or the cofiduciary remaining in office after the discharge or removal of such fiduciary, may have actions for such assets as shall have come to the possession of the discharged or removed fiduciary for any breach of trust, waste, embezzlement or misapplication thereof and may proceed by actions for the recovery of the assets of the estate against the discharged or removed fiduciary or against any other person into whose possession such assets shall have come or in whose hands they may be

Source R S 3 7-73

3A:7-74. Removed or discharged fiduciary to deliver assets to successor. A fiduciary when removed or discharged by any court shall forthwith deliver to his cofiduciary or the substituted fiduciary succeeding him all the assets of the

estate which he holds, and shall, within 60 days after the accounting and settlement as provided in section 3A 7-76 of this title, pay over to such co-fiduciary or substituted fiduciary, as the circumstances of the case may require or the court may order, any balance shown to be due

Source R S 3 7-74

3A:7-75. Penalty for failure of removed or discharged fiduciary to account or deliver assets.

A fiduciary who fails to account as provided by section 3A 7-76 of this title or who fails to comply with the provisions of section 3A 7-74 of this title, or any order entered thereunder, shall be liable to a fine not exceeding the amount of the estate in the hands of such fiduciary and shall also be liable as for contempt for disobeying or failing to perform any such court order or for failing to pay a fine as aforesaid

All fines hereunder shall be collected by execution against the real or personal property of the defaulting fiduciary and shall be collected in favor of the person to whom the defaulting fiduciary should have made such payment or delivery as aforesaid and shall be received as assets by the co-fiduciary or substituted fiduciary succeeding to the management of such estate

Source. R S 3 7-75

3A:7-76. Account of removed or discharged fiduciary.

A fiduciary removed or discharged by any court shall, within 60 days after removal or discharge or within such shorter or longer period as the court may direct, state and settle his account before the superior court or county court, as the case may be, for all the assets of the estate in his charge.

Source R S 3 7-76

3A:7-77. Appointment of substitute for fiduciary engaged in war service. When any person named in any will, or in any instrument creating a trust, to act as a fiduciary, who has not accepted the appointment or has not qualified, or when any person acting as fiduciary, is engaged in war service, the superior court, or if the appointment be made in a will probated or offered for probate before the surrogate or county court of any county, then the county court of that county, may suspend the right of such person to be appointed as such fiduciary or the powers of such fiduciary while he is engaged in war service and until the further order of the court, and appoint in his place a substitute, to be denominated a substituted fiduciary, until the court terminates the suspension and reinstates the fiduciary, or the person named to act as fiduciary is appointed

Source. C 3 7-76 1, as am L 1944, c 129, §2

Note of Reporter The statute as enacted requires the taking of testimony, and hence in the limited situation where the surrogate has been authorized to act it is proposed that the power be lodged in the county court. The practice under the statute will be, as in all probate actions, in accordance with Rule 3 79

3A:7-78. Co-fiduciaries; terms of instrument. If the fiduciary or person named to act as fidu-

ciary is one of several co-fiduciaries or one of several named to act as co-fiduciaries the court may appoint a substituted co-fiduciary or may appoint such fiduciary's co-fiduciary or co-fiduciaries or the person or persons named to act as co-fiduciaries to act as such substituted fiduciary, and if the will or other instrument under which said fiduciary is appointed or person is named to act as fiduciary provides for a substitute or alternate fiduciary in the event of his death or otherwise, the court shall appoint as substituted fiduciary such substitute or alternate fiduciary or person named to act as substitute or alternate fiduciary to act if he is willing to act and can qualify.

Source C 3 7-76 4, as am L 1944, c 129, §5

3A:7-79. Substituted fiduciary; bond. Such substituted fiduciary shall give bond in such terms as to condition, security and amount as were required of said fiduciary or person named to act as fiduciary in whose stead he is appointed or as said court shall direct, and if said fiduciary or person named to act as fiduciary was not required to give bond the court may, in its discretion, require such substituted fiduciary to give bond in such terms as to condition, security and amount as the court may determine.

Source C 3 7-76 5, as am L 1944, c 129, §6

3A:7-80. Substituted fiduciary; powers and duties. Such substituted fiduciary, upon qualifying in accordance with the order of the court, shall be entitled to such control and possession of all of the unadministered assets of said estate, trust or fund, and shall be vested with such title to and powers over said estate, trust or fund as the fiduciary or person named to act as fiduciary, in whose place and stead such substituted fiduciary is appointed, had or would have had except for such suspension of rights or powers and shall have power to administer the estate, trust or fund and shall be required to administer the same and to account for his administration thereof according to law

Source C 3 7-76 6, as am L 1944, c 129, §7

3A:7-81. Reinstatement of original fiduciary; accounting. When the fiduciary or person named to act as fiduciary in whose place such substituted fiduciary is appointed ceases to be engaged in war service, he may by action in the court suspending his powers or right to act, be reinstated as fiduciary or may be appointed to act as fiduciary if any part of said estate, trust or fund remains unadministered and if any of the duties of the office of fiduciary thereof remain unexecuted, except the duty to account.

Thereupon any substituted fiduciary of said estate, trust or fund, appointed by the court shall be removed and all of his powers as such substituted fiduciary shall cease, except the power and duty to account for his administration of said estate, trust or fund. Such substituted fiduciary shall deliver to the reinstated fiduciary

all of the unadministered assets of said estate, trust or fund remaining in his possession and control and shall promptly account to the court for his administration of said estate, trust or fund.

Source. C 3 7-76 7, as am L 1944, c 129, §8

3A:7-82. Powers and duties of reinstated fiduciary. Upon reinstatement, such fiduciary or person named to act as fiduciary shall be vested with all of the title to such portion of such estate, trust or fund as has not been administered by such substituted fiduciary, and shall have all of the powers and duties as to the same which he had or would have had by virtue of his original appointment as such fiduciary or his being named to act as fiduciary but shall have no responsibility for the administration of said estate, trust or fund by such substituted fiduciary or person named to act as substituted fiduciary. However, he shall be responsible for and shall account for his own administration of said estate, trust or fund, which may have remained in his hands or for which he may be accountable by his own action or neglect.

Source C. 3 7-76 8, as am L 1944, c 129, §9

3A:7-83. Commissions; apportionment. Commissions on the administration of said estate, trust or fund shall be apportioned between said original fiduciary and such substituted fiduciary in such manner as the court shall direct.

Source. C 3 7-76 9

3A:7-84. More than 1 substituted fiduciary. The court may appoint more than 1 substituted fiduciary in place of any fiduciary or person named to act as fiduciary so engaged in war service if, in its discretion, the court shall determine that it is for the best interests of the estate, trust or fund, or of the parties interested therein, that such appointment shall be made.

Source C 3 7-76 10, as am L 1944, c 129, §10, L 1942, c 160, p 470, §10, as am L 1944, c 129, p 359, §10

3A:7-85. "Engaged in war service" defined. For the purposes of sections 3A 7-77 to 3A:7-84 of this title, a fiduciary or person named to act as fiduciary shall be deemed to be engaged in war service if in time of war

a. He is a member of the armed forces of the United States or of any of its allies or has been accepted for such service and is awaiting induction into such service, or

b. He is engaged in any work abroad in connection with a governmental agency of the United States or in connection with the American Red Cross Society or any other body with similar objects; or

c. He is interned in an enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this state

Source. C. 3 7-76 11, as am L 1944, c 129, §11, L 1942, c 160, p 470, §11, as am L 1944, c 129, p 360, §11

Article 5. CONTINUATION OF DECEDENT'S BUSINESS

3A:7-86. Application to county court to continue business of decedent. If any fiduciary is granted letters by the surrogate or county court of any county, the county court of that county may authorize him to continue for such period or periods of time and under such conditions as the court may from time to time prescribe, any business in which the estate, trust or guardianship, or any part thereof, may be invested.

Source R S 3 7-77.

Note of Reporter. R S 3 7-77, from which the above statute is derived, authorized the orphans' court of the county to lend its advice and direction to any executor, administrator or trustee. Insofar as this statute authorized the court to instruct a fiduciary as to a matter lying within the jurisdiction of the court, it was superfluous, because the uniform declaratory judgments act (R S. 2 22-66 et seq) authorized any court of record within its jurisdiction to give advice and direction. Under this power the county court can instruct a fiduciary as to any matter on which it could surcharge the fiduciary in his accounting.

Insofar as R S. 3 7-77 purported to authorize the orphans' court to construe a will, it has always been deemed unconstitutional, and in fact the law is so well settled in this respect that there have been hardly any attempts to invoke the statute in such a situation.

Under the proposed revision of this statute, there have been omitted the provisions thereof which will be found better stated in the uniform declaratory judgments act. The remainder of the statute covering the continuance of a business has been broadened so as to include a guardian as well as an executor, administrator and trustee, but otherwise without change.

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- 3A 8-28 Application to have action discontinued
- 3A 8-29 Discontinuance of action
- 3A 8-30 Unsatisfied claims
- 3A 8-31 Bonds not invalidated because of abolition of certain offices or courts

Article 1 IN GENERAL

3A:8-1. Bonds of fiduciaries. The court or surrogate appointing a fiduciary in any of the instances enumerated below shall secure faithful performance of the duties of his office by requiring the fiduciary thereby authorized to act to furnish bond to the superior court in such a sum and with such proper conditions and sureties, having due regard to the value of the estate in his charge and the extent of his authority, as the court shall approve

a When an appointment is made upon failure of the will, or other instrument creating or continuing a fiduciary relationship, to name a fiduciary,

b When a person is appointed in the place of the person named as fiduciary in the will, or other instrument creating or continuing the fiduciary relationship,

c When the office to which the person is appointed is any form of administration of the estate of an intestate or guardianship of a minor mental incompetent, except where the guardian is appointed by will, in which event the requirement for bond shall be governed by the provisions of section 3A 7-20 of this title;

d When letters are granted to a nonresident executor, except in cases where the will provides that no security shall be required of the person named as executor therein;

e When an additional or substituted fiduciary is appointed, or

f When an appointment is made under chapters 41 and 42 of this title, of a fiduciary for the estate or property, or any part thereof, of an absentee.

Where a fiduciary removes from the state the court may require him to give such security as it may determine

When specific conditions as to a particular bond are prescribed by law no such bond shall be approved unless the prescribed conditions are included therein, and where by law security is authorized to be given other than by sureties on the bond, compliance with such law shall be deemed compliance with this section

Nothing contained in this section shall be construed to require a bond in any case where by

law it is specifically provided that no bond need be furnished

Source R, S 3 8-1, as am L 1948, c 359, p 1445, §1

3A:8-2. Bond where will requires bond and fails to name obligee; prosecution. When a will nominating an executor or devising or bequeathing property to a trustee by its terms requires the executor or trustee to give bond but is silent as to who shall be the obligee in the bond, the superior court of this state may be made the obligee therein and the bond shall be approved as to amount and sureties by, and filed with, the surrogate of the county wherein the will was probated, unless the will was probated before the superior court, in which case the bond shall, after approval, be filed with the clerk thereof

If forfeited, the bond may be prosecuted and the money recovered thereon be applied, all as in the case of other bonds of fiduciaries given to the superior court

Source R S 3 8-2, as am L 1948, c 359, p 1446, §2

3A:8-3. Bond when property unsafe or in danger of waste. When, in cases where a fiduciary has not previously furnished a bond, proof is made to the satisfaction of the court wherein a fiduciary is accountable that the property in the hands of the fiduciary is unsafe, insecure, or in danger of being wasted, the court may, at the instance of any person interested, including creditors, in the decedent's estate or the estate held by the fiduciary, require the fiduciary to furnish a bond to the superior court in a sum and with sureties to be approved by the court conditioned for the faithful performance of such fiduciary's duty

Source R S 3 8-3

3A:8-4. Bond on grant of intestate administration; conditions. The bond of an administrator of the estate of a person dying intestate shall be conditioned substantially as follows

a To make a true and perfect inventory of the personal property of the decedent which has or shall come to his hands, knowledge or possession or into the hands of any other person for him,

b If required by law or a court of competent jurisdiction, to make an appraisement of the

same and to exhibit in the office of the clerk of the superior court or of the surrogate of the proper county, as the case may be, the inventory and appraisal within the time so required,

c To administer well and truly all the personal property of the decedent which may come into his hands or possession or into the hands or possession of any other person for him,

d To make a just and true account of his administration and if required by court to settle the same therein within the time so required,

e To deliver and pay to the distributees entitled thereto by law such surplus personal property of the decedent as may remain pursuant to the account, and

f To deliver his letters of administration to the proper court, when required so to do, if a will of the decedent is found and exhibited to it and by it admitted to probate

Source R S 3 8-4, as am L 1948, c 359, p 1447, §3

3A:8-5. Bond on certain grants of administration; conditions. In case of the grant of letters of administration, durante minore etate, durante absentia, pendente lite, cum testamento annexo and other grants of administration, the conditions of the fiduciary's bond shall be substantially as provided in section 3A 8-4 of this title with such changes as shall be appropriate in view of the nature of the respective grants

Source R S 3 8-5

3A:8-6. Bond of guardian of mental incompetent; form. The bond required of a guardian of a mental incompetent shall be conditioned substantially as follows

a To well and truly take care of the person and estate of the mental incompetent and all writings and evidences touching his real estate and to render the same to such person or persons as by law are or may be entitled to receive the same;

b To improve the real estate to the best advantage and to commit no waste or destruction thereof or thereon,

c To render a just and true account of the rents, issues and profits of the real estate and of the proceeds of the sale of any real estate that may be ordered to be sold, and

d To render a just and true account of the expenditures and disbursements of the goods, chattels and personal estate of the mental incompetent that shall come to his hands

Source R S 3 8-6

3A:8-7. Allowance of expense of procuring surety bond. A fiduciary required by law or order of court to give a bond, as such, may include as a part of the lawful expense of executing his trust such reasonable sum, not exceeding, however, 1 per cent per annum on the amount of such bond, paid a company authorized under the laws of this state so to do, for becoming his surety on such bond, as may be allowed by the court in which he is required to account

Source R S 3 8-7

Article 2. ADDITIONAL AND SEPARATE SECURITY

3A:8-8. Original sureties and bond insufficient; additional surety. If it appear that the security given by a fiduciary at the time of appointment was insufficient or has become insufficient or the sureties appear to be in dubious or failing circumstances or insufficient for the security of the estate, the court wherein the fiduciary is accountable may order the fiduciary to give such other or further security to the superior court, by bond in the usual form, and such other sureties as the court, after hearing persons interested, including creditors, shall approve

Source R S 3 8-8

3A:8-9. Fiduciary required to account and give separate security to surety; when. When the surety on the bond of a fiduciary discovers that such fiduciary is wasting or mismanaging the estate, whereby such surety may become liable to loss or damage, the court to which he may be accountable may, in an action by such surety, and upon sufficient reason therefor, require the fiduciary to render an account of the performance of his office to such surety, and if it shall appear that such fiduciary has embezzled, wasted, misapplied, mismanaged or insufficiently secured such estate, the court shall direct the fiduciary to give separate security to such surety for the true payment of the balance in his hands to be paid according to the trust

Source R S 3 8-9

3A:8-10. Blank

Note of Reporter Repeal This section is covered by R S 3A 12-4, and the remedies provided by R S 3A 7-74 to R S 3A 7-76, including arrest in contempt proceedings, are more practicable and satisfactory than a capias action

Article 3 DEPOSIT OF MONEY OR FUNDS IN LIEU OF FULL SECURITY OF BOND

3A:8-11. Deposit; when permitted. If the value of an estate or fund is so great that the court in which the fiduciary received his appointment or to which he is accountable deems it inexpedient to require security in the full amount prescribed by law, or if the estate or fund is in cash or is invested in securities in which a fiduciary may by law invest money intrusted to him in his fiduciary capacity without special order of any court, the said court may direct that any securities for the payment of money belonging to the estate or fund be deposited in some savings bank, savings institution or trust company incorporated under the laws of this state, or in some national bank, having safe deposit boxes for the use of private individuals, and that any money belonging to the estate or fund be deposited in some savings bank, savings institution or trust company incorporated under the laws of this state or in some national bank, which depository shall be

approved by the court when it directs the making of the deposit

Source R S 3 8-11, as am L 1945, c 113, p 466, §1

Note of Reporter Insertion of the word "surrogate" is superfluous in the usual case and is inappropriate where the appointment is made by the superior court

3A:8-12. Bond. After deposit has been made pursuant to section 3A 8-11 of this title, the court may fix the amount of the bond with respect to the value of the remainder only of the estate or fund, or in case all of said estate or fund is so deposited, then in such amount as the court shall determine to be sufficient under the circumstances

Source R S 3 8-12, as am L 1945, c 113, p 466, §2

3A:8-13. Deposits, how made and withdrawn. Deposits authorized under section 3A 8-11 of this title shall be made in the name of the fiduciary and shall be withdrawn from the custody of the depository only upon the direction of the court which authorized the deposit and no part of the principal of securities so deposited shall be received or collected by the fiduciary without a like direction

Source R S 3 8-13

3A:8-14. Withdrawals; additional bond. No fiduciary shall be permitted by the court to collect or receive the principal of securities on deposit or to withdraw a deposit pursuant to section 3A 8-13 of this title unless an additional bond has been given by him, or unless there is proof that the estate or fund has been so reduced by payments or otherwise, that the amount of the bond originally given will be sufficient in amount to secure the estate or fund

Source R S 3 8-14

3A:8-15. Depository to issue duplicate deposit slips. A depository receiving a deposit pursuant to section 3A 8-11 of this title, shall issue a certificate in duplicate and deliver 1 certificate to the clerk of the court authorizing the deposit and the other to the fiduciary. The certificates shall set forth the amount and nature of the securities, or amount of money, deposited

Source. R S 3 8-15, as am L 1945, c 113, p 467, §3

Article 4. DISCHARGE OF SURETY AND REDUCTION OF BONDS.

3A:8-16. Discharge of surety from liability for future acts of fiduciary. If a surety or the representative of the surety upon the bond of any fiduciary brings an action in the court wherein the fiduciary is accountable, to be relieved from further liability as such surety and to require the fiduciary to account and give a new bond, the court by its judgment must, if the fiduciary renders an account in due form of law and files a new bond duly approved, release such surety from liability upon the bond for any act or default of the fiduciary which may occur after the judgment. In default of the fiduciary accounting and filing such new bond the court shall direct such fiduciary to account

and, if the trust property shall be found or made good and paid over or property secured, the court by its judgment shall discharge such surety from any and all further liability as such for the acts or omissions of the fiduciary after such discharge.

Source R S 3 8-16

3A:8-17. Discharge of surety for fiduciary after final account. At any time after the expiration of 3 months from the entry of any final judgment of distribution made after the passing by any court of this state of competent jurisdiction of the final account, the court which passed such final account shall, in an action by any person interested, and upon proof to the satisfaction of the court that the entire estate has been distributed according to law, and that no appeal from such judgment of distribution is pending, discharge the sureties of the principal from any and every liability by reason of their having become such sureties

Source R S 3 8-17

3A:8-18. Effect of discharge of surety. From and after a discharge of a surety pursuant to section 3A 8-17 of this title, all his liability under or by virtue of his undertaking as such surety shall cease, but the personal liability of the principal in the bond shall remain

Source R S 3 8-18

3A:8-19. Reduction of fiduciary's bond. When it shall appear upon the allowance of a fiduciary's intermediate account that the fiduciary's bond is in a greater sum than is necessary for the proper protection of property and assets of the estate remaining in his hands, the court wherein the accounting is had may in an action for that purpose allow the fiduciary to give a new bond in such lesser sum as the court may deem sufficient

When such new bond, with conditions and sureties approved by the court, is duly filed, the court by its order or judgment may discharge the sureties upon the original bond from all liability thereunder after the date of such order or judgment

Source R S 3 8-19

3A:8-20. Discharge of fiduciary from liability on bond without surety. Whenever a fiduciary which was or is a bank, trust company, savings bank or national bank, has heretofore given or hereafter gives a bond without surety and it shall appear to the satisfaction of the county court of the county in cases in which the fiduciary was appointed by the surrogate or by the county court of the county, or otherwise to the satisfaction of the superior court, that the person entitled to take the assets of the estate or trust administered by the fiduciary has received the same, and has by release or other instrument released the fiduciary from liability, the county court or the superior court, as the case may be, with notice or without notice if it be so directed,

cancel the bond given by the fiduciary and discharge it from all liability on the bond.
Source C 3 8-19 1, as am L 1944, c 181, §1

3A:8-21. Proof of judgment barring creditors required in certain cases. No such order shall be made in cases in which the fiduciary is an executor, administrator with the will annexed, substituted administrator with the will annexed, administrator or substituted administrator except upon proof that a judgment barring creditors has been entered pursuant to section 3A 25-9 of this title, and that there are not unpaid or pending any claims of creditors of the decedent presented to the fiduciary pursuant to chapter 25 of this title.

Source C 3 8-19 2, as am L 1944, c 181, §2

Article 5 PROSECUTION OF BONDS

3A:8-22. Prosecution of bonds of fiduciaries. Except where otherwise provided by law, when the bond of a fiduciary given to any court or to any judicial officer or clerk of any court, for the faithful performance, by him, of the duties of his office as such fiduciary, is forfeited, said bond may, without leave of any court, be prosecuted in any court of record by, and at the expense of, an aggrieved party and in the name of the state at the relation of such aggrieved party

Source R S 2 26-216, L 1948, c 324, p 1302, §1

Note of Reporter. Under the prior practice, suit on a fiduciary's bond was brought in the name of the ordinary, and before suit was brought, a bond was required of the prosecutor in order to indemnify the ordinary against costs. In that situation it was perhaps appropriate to require leave of the prerogative court before the suit was started. However, now that the suit is brought in the name of the state, it seems unnecessary to go through the formality of requiring the aggrieved person, before he sues on the bond, first to make an application to the superior court for leave to sue.

3A:8-23. Court in which to bring proceedings to assess damages, to satisfy judgment or to discontinue action. The moneys found due on the fiduciary's bond shall be applied toward making good the damage sustained by reason of the nonperformance of the conditions of the bond. Proceedings for that purpose, proceedings under sections 3A 8-24 to 3A 8-27 of this title for the satisfaction of the judgment on the bond, and proceedings under sections 3A 8-28 and 3A 8-29 for the discontinuance of the action on the bond shall be taken in the superior court if the action on the bond has been brought in that court or the fiduciary is accountable there, otherwise such proceedings shall be taken in the county court where he is accountable.

Source R S 2 26-217, L 1948, c 324, p 1302, §2

Note of Reporter. Under the existing law where a judgment is secured on a bond in an action at law brought in any court, a special application must be made to the superior court (formerly the prerogative court) to direct how the moneys recovered should be applied. If a bond is not to be prosecuted except with leave of the superior court, then probably the superior court should appropriately assess the damages on the bond. If, however, leave is not to be

secured (as proposed in section 3A 8-22), it would seem to be better to have the assessment made in the county court if proceedings as to the administration of the estate are normally conducted there and if the action on the bond is not brought in the superior court.

Where the action on the bond is brought in the superior court it would seem to be efficient to enable that court in the same action to assess the damages. In fact, under article VI, section III, paragraph 4 of the constitution, legal and equitable relief must be granted in any cause so that all matters in controversy between the parties must be completely determined. See proposed new Rule 3 92-4.

3A:8-24. Notice to claimants. If any bond given by a fiduciary is forfeited and prosecuted to judgment in any court of record, and it is made to appear to the superior court, or as provided in section 3A 8-23, the county court, by petition filed by any surety against whom judgment has been rendered upon such bond, that the damages sustained by the nonperformance of the condition of such bond, together with costs of action and execution fees thereon, have been fully satisfied so far as such surety shall have been able to ascertain such damages, the court, upon application on such surety, may make an order directing such surety to give public notice to all persons aggrieved by the forfeiture of such bond, to bring in their debts, demands and claims against the estate in charge of the fiduciary, under oath within 3 months from the date of such order. Such notice shall be advertised, commencing within 20 days of the date of the order, for 6 weeks successively, once in each week, in 1 or more of the newspapers of this state, as may be directed in the order. Any further notice, if the court may deem it necessary, shall also be given.

Source 2 26-218, L 1948, c 324, p 1302, §3

3A:8-25. Presentation of claims. Debts, claims and demands ordered to be brought in, pursuant to this act, shall be presented by the respective claimants in writing, verified by oath, setting forth the amount and particulars thereof, or the bringing in of the same shall be of no effect.

Source 2 26-219, L 1948, c 324, p 1303, §4

3A:8-26. Exceptions; trial. The surety may except to any claim, debt or demand, and thereupon the same shall be tried as the court may direct, and the court may, if the same be not proved on trial to its satisfaction, disallow and reject it.

Source 2 26-220, L 1948, c 324, p 1303, §5

3A:8-27. Satisfaction of judgment. After expiration of the time limited in the order the court may, upon proof to its satisfaction that notice has been advertised as directed and that no claims, debts or demands have been presented or that all claims, debts or demands presented and allowed have been fully paid and satisfied by the surety, or otherwise, order satisfaction of the judgment to be entered pursuant to law.

Source 2 26-221, L 1948, c 324, p 1303, §6

3A:8-28. Application to have action discon-

tinued. In any action on the bond of a fiduciary, the surety before judgment may apply by petition to have the action discontinued. The application shall be made to the superior court or the county court, as provided in section 3A 8-23. The court shall thereupon appoint a time and place to hear the application and direct what notice, if any, of such application be given to the persons aggrieved by the forfeiture of the bond.

Source 2 26-222

Note of Reporter As the law stands presently, an application to discontinue an action on a fiduciary's bond must always be made to the superior court (formerly the prerogative court) even though the action is pending in the county court. It would seem to be better, where the estate is being administered in the county or surrogate's court, to have such application made to the county court if the bond has been required by the county court or the surrogate.

3A:8-29. Discontinuance of action. If it shall appear on the hearing that all damages sustained by reason of the forfeiture of the bond have been paid so far as the surety shall have been able to ascertain, the court may direct that the action be discontinued upon payment of taxed costs of such suit.

Source 2 26-223, L 1948, c 324, p 1304, §8

3A:8-30. Unsatisfied claims. If the claim of any person aggrieved by the forfeiture of such bond shall remain unsatisfied after the discontinuance of such action, such person may re-prosecute such bond, in the same manner as if the action had not been instituted on the same.

Source 2 26-224, L 1948, c 324, p 1304, §9

Note of Reporter As indicated in the Note of Reporter to 3A 8-22, leave of the superior court is not deemed necessary.

3A:8-31. Bonds not invalidated because of abolition of certain offices or courts. No bond heretofore given by any fiduciary for the faithful performance, by him, of the duties of his office as such fiduciary, to any court or to any judicial officer, or clerk of any court abolished by the Constitution of 1947, shall be invalidated or rendered void by reason of the abolition of the office of ordinary, or of chancellor, or of any such court, clerk, register or judicial officer, but the same shall remain in full force and effect, and if forfeited, may be prosecuted in accordance with the provisions of this article.

Source 2 26-225, L 1948, c 324, p 1304, §10

Chapter 9. INVENTORIES.

Section

- 3A 9-1 General requisites
- 3A 9-2 Inventory and appraisement to be made and filed
- 3A 9-3 Blank
- 3A 9-4 Appointment of appraisers
- 3A 9-5 Property to be included in inventory and appraisement

Section

- 3A 9-6 Proof of inventory and exempt list
- 3A 9-7 Exemption for benefit of widow and child
- 3A 9-8 Selection of property to be exempted
- 3A 9-9 Inventory of guardian after appointment.
- 3A 9-10 Blank
- 3A 9-11 Blank

3A:9-1. General requisites. No inventory shall be received or admitted to be proved which is not full and specific in its details.

Source R S 3 9-1

3A:9-2. Inventory and appraisement to be made and filed. An executor or administrator may or, if required by the court wherein he is accountable or if the exemption for the benefit of the family of the decedent is to be set forth as provided by section 3A 9-7 of this title, shall make a true and perfect inventory of the personal property of his decedent and cause a just appraisement thereof to be made by 2 discreet and impartial persons.

The court shall not require an inventory and appraisement to be filed until after the lapse of 3 months after the grant of letters, except that if such an exemption is to be set off, the inventory and appraisement shall be made before the lapse of that period.

Source R S 3 9-2

Note of Reporter This states the present law.

3A:9-3. Blank

Note of Reporter The above section is now covered by 3A 9-2.

The application by an interested person to compel an inventory has been stricken as procedural. See proposed new Rules 3 94-4 and 5 3-6.

3A:9-4. Appointment of appraisers. If an inventory and appraisement is to be filed, the appraisers shall be chosen by the executor or administrator subject to the approval of the superior court or surrogate, except in cases where it shall be necessary to set off the exemption for the benefit of the family of the decedent as allowed by section 3A 9-7 of this title, in which event the executor or administrator shall apply to the surrogate of the county wherein the decedent resided at his death, or to the superior court, as the case may be, who shall thereupon appoint 2 discreet and judicious persons of such county as appraisers who are neither interested in the estate nor of kin of the decedent's widow or child. Such appraisers shall, before entering upon the duties of their appointment, be

severally sworn before the surrogate, or a person authorized to administer oaths, faithfully, honestly and impartially to appraise the property according to its true and intrinsic value without reference to what the same might be supposed to bring at a sale by vendue

Source R S 3 9-4

3A:9-5. Property to be included in inventory and appraisal. The appraisers shall make an inventory and appraisal of all the personal property whereof the decedent died possessed

Source. R S 3 9-5

3A:9-6. Proof of inventory and exempt list. The inventory of an executor or administrator, which is to be filed, shall be proved by his oath that the same is just and true, and by the oath of the appraisers, or 1 of them, that the personal property specified in the inventory was appraised at its just and true values according to their or his best judgment. If only 1 of the appraisers be sworn it shall be added that the other appraiser was present at the same time and consented to the valuation and appraisal. Such oaths shall be taken before any person qualified to administer oaths in this state and the same shall be indorsed on the inventory filed with the surrogate or clerk of the superior court, as the case may be

If personal property of the decedent shall have been set off for the benefit of the family, the executor or administrator shall also verify by his oath the list of property selected therefor and file the same with the inventory.

Source R S 3 9-6

3A:9-7. Exemption for benefit of widow or child. The wearing apparel of any person who

shall die leaving a family residing in this state, and his personal property to the value of \$200'00, shall be reserved to and for the use of his family against all creditors, and before any distribution or other disposition thereof. This section and sections 3A 9-4 and 3A 9-8 of this title shall not be permitted to conflict with the will of the decedent. Every person residing in this state at the time of his death and leaving surviving him a widow or child who shall reside in his family at his death, shall be deemed to have left a family entitled to the benefits of this section

Source. R S 3 9-7

3A:9-8. Selection of property to be exempted. From the completed inventory, the widow of the decedent, or his executor or administrator may select personal property to the value of \$200 00 and a list of the property selected shall be annexed to the inventory. Personal property so selected shall thereupon become the property of the family and remain for their use

Source R S 3 9-8

3A:9-9. Inventory of guardian after appointment. Every guardian may, and if required by the court wherein he is accountable shall, file with the surrogate of the proper county or the clerk of the superior court, as the case may be, an inventory, under oath, of all the real and personal property which he shall have received or of which he has taken possession. The court shall not require an inventory and appraisal to be filed until 3 months have elapsed after the grant of letters

Source R S 3 9-9

3A:9-10. Blank

3A:9-11. Blank.

Chapter 10. ACCOUNTING.

Section

Article 1. When Unnecessary.

3A 10-1

to

3A 10-3 Blank

3A 10-4 Guardian or trustee filing release by ward or cestui que trust

Article 2 Requirements and Proceedings

3A 10-5 First account of certain fiduciaries

3A 10-6 Intermediate accounts of certain fiduciaries

3A 10-7 Blank

3A 10-8 Account and bond required of fiduciary

3A 10-9 Account by representative of deceased fiduciary

3A 10-10 Blank

3A 10-11 Allowance of intermediate accounts of guardians, exceptions to account

Article 1 WHEN UNNECESSARY

3A:10-1

to

3A:10-3. Blank

3A:10-4. Guardian or trustee filing release by

Section

3A 10-12 Exceptions, hearing

3A 10-13 Definitions, statements or information regarding assets as part of account, effect of judgment allowing account

Article 3. Non-testamentary Trustees.

3A 10-14 Non-testamentary trustee defined

3A 10-15 Account of personal property and of rents of real estate

3A 10-16 Fees of surrogate

Article 4. Certain Expenditures Authorized

3A 10-17 Rental of safe deposit box, expenses of safe-keeping of securities

3A 10-18

to

3A 10-22 Blank.

ward or cestui que trust. A guardian or testamentary trustee need not render or settle his account if he files, in the court wherein he was appointed, a release or discharge from the ward or cestui que trust, providing such ward or

cestui que trust is of full age and is mentally competent

Such release or discharge shall be executed and acknowledged as provided for deeds of real estate to be recorded

Source R S 3 10-4

Article 2 REQUIREMENTS AND PROCEEDINGS

3A:10-5. First account of certain fiduciaries.

An executor or administrator may or, if required by the superior court or the county court of the county in which he was appointed, shall settle his account in that court, but the court shall not require him to account until after the lapse of 1 year after his appointment

Source R S 3 10-5

Note of Reporter This states the present law

3A:10-6. Intermediate accounts of certain fiduciaries. A guardian or trustee shall settle his account in the superior court, or if he was appointed by the surrogate or county court of any county, then in the county court of the county, once in 3 years, and oftener if required

Source R S 3 10-6

3A:10-7. Blank.

3A:10-8. Account and bond required of co-fiduciary. Upon good cause shown, the county court or the superior court, as the case may be, may order and direct each co-fiduciary to account for all assets which may have come into his hands

Upon good cause shown, the county court or the superior court may also require a fiduciary to give bond, in a sum and with sureties to be approved by the court, to each of his co-fiduciaries to indemnify them against loss due to his neglect, default or breach of trust or to give a like bond to the superior court, conditioned for the faithful performance of his duties as such fiduciary and the proper disposition of all assets then in, or thereafter to come into, his hands

Source. R S 3 10-8

3A:10-9. Account by representative of deceased fiduciary. When a fiduciary dies without having filed an account or fully settled and obtained an allowance of an account of the administration of the estate that has come into his hands, the legal representative of the deceased fiduciary may settle the account in the court in which the fiduciary was accountable

Source R S 3 10-9

3A:10-10. Blank.

3A:10-11. Allowance of intermediate accounts of guardians; exceptions to account. A judgment settling a guardian's intermediate account shall not be conclusive. If at any time after the judgment any item appearing in the account be excepted to by the ward or his representative or other party interested, he must prove or show the falsity or injustice thereof unless notice on his behalf shall have been given at the

time of the settlement of the account that such article would be excepted to and a memorandum of that notice shall have been entered of record or entry thereof requested

Source R S 3 10-14

3A:10-12. Exceptions; hearing. On exceptions to an account of a fiduciary, the court or any party interested therein may examine the accountant, on oath, concerning the truth and fairness of the account

Source R S 3 10-16

3A:10-13. Definitions; statements or information regarding assets as part of account; effect of judgment allowing account.

a For the purpose of this section, "fiduciary" shall include "cofiduciary", and shall mean executor, administrator, testamentary or non-testamentary trustee, guardian, and any other person occupying any other lawful office or employment of trust, "cofiduciary" shall mean 1 or more of 2 or more fiduciaries serving in any fiduciary capacity, "account" shall mean any intermediate or final account of any fiduciary or cofiduciary, except that for the purposes of paragraph c, it shall not include any intermediate account of a guardian

b Whenever, in the superior court or in the county court, in an account, or in a complaint annexed to, accompanying or pertaining to an account, or in any schedule, appendix or addendum annexed to the complaint or annexed to the account whether or not referred to in the complaint or account as being so annexed, there shall be set forth or appear statements or lists of or information as to the securities, investments or other assets in a fiduciary's hands at the close of the period covered by the account or at any other time or times during the period covered by the account, or there shall be so set forth or appear statements of or information as to changes made in securities, investments or other assets during the period covered by the account, or there shall be so set forth or appear allegations of or information as to other acts, transactions, matters or things, of any nature or kind, done or omitted by the fiduciary during the period covered by the account, the complaint and such statements or lists of or information as to such securities, investments or other assets, and such statements of or information as to such changes in such securities, investments or other assets, and such allegations of or information as to such other acts, transactions, matters or things, shall be part of the account

c A judgment allowing an account, after due notice, shall be res adjudicata as to all exceptions which could or might have been taken to the account, and shall constitute an approval of the correctness and propriety of the account, the legality and propriety of such securities, investments and other assets, the legality and propriety of such changes in securities, investments or other assets, and the legality and pro-

priety of all such other acts, transactions, matters and things, and also shall exonerate and discharge the fiduciary from all claims and demands of all interested parties and of all those in privity with or represented by such interested parties, except for the securities, investments and other assets in the fiduciary's hands at the close of the period covered by the account, and except insofar as exceptions to the account shall be taken and sustained, and except for assets which may come into the fiduciary's possession after the close of the period covered by the account.

Source R S 3 10-18, as am L. 1947, c 398, p 1250, §1

Article 3 NON-TESTAMENTARY TRUSTEES

3A:10-14. Non-testamentary trustee defined. As used in section 3A 10-13 and sections 3A 10-15 to 3A 10-21, the term "non-testamentary trustee" means any owner of real or personal property who holds title thereto subject to equitable duties to deal with such property for the benefit of another or others arising from an express intention to create such duties manifested in writing otherwise than by a will or other testamentary disposition of such property.

Source R S 3 10-23, L. 1938, c 108, p 228, §1

3A:10-15. Account of personal property and of rents of real estate. Any non-testamentary trustee shall have the right, in addition to and not in limitation of any other remedy now or hereafter provided by law, from time to time to settle his intermediate and final accounts in the county court

Source R S 3 10-24, L. 1938, c 108, p 228, §2

3A:10-16. Fees of surrogate. The surrogate shall receive for filing, auditing, and reporting to the court the accounts of non-testamentary trustees the same fees as are now or may hereafter be provided by law in the case of accountings by other fiduciaries.

Source R S 3 10-29, L. 1938, c 108, p 229, §7

Article 4 CERTAIN EXPENDITURES AUTHORIZED

3A:10-17. Rental of safe deposit box; expenses of safe-keeping of securities. A fiduciary may include as a part of the lawful expense of executing his trust such reasonable sum paid to a bank, trust company or safe deposit company organized under the laws of this state, or to a national bank doing business in this state, for safe deposit box rental for the safe-keeping of the securities of the trust, as may be allowed by the court in which he is required to account. A fiduciary who holds under a lease or owns a vault within this state may include as a part of the lawful expense of executing his trust such reasonable sum for the safe-keeping of the securities and other property of the trust in said vault as may be allowed by the court in which he is required to account

Source R S 3 10-22, as am L. 1939, c 125, p 434, §1

3A:10-18

to

3A:10-22. Blank

Chapter 11. COMMISSIONS.

Section	
3A 11-1	Allowance in general
3A 11-2	Computation of commissions, rates
3A 11-3	Commissions on real estate
3A 11-4	Commissions of non-testamentary trustee
3A 11-5	Provision in will for specific compensation

Section	
3A 11-6	Disputes between fiduciaries as to apportionment
3A 11-7	Fiduciary removed from office, forfeiture of commissions
3A 11-8	Legal fees for attorney also serving as fiduciary

3A:11-1. Allowance in general. Allowance of commissions on corpus in excess of \$50,000 to executors, administrators, administrators with the will annexed, guardians, trustees under a will and fiduciaries appointed under chapter 41 or 42 of this title for the estate or property, or any part thereof, of an absentee, shall be made with reference to their actual pains, trouble and risk in settling the estate, rather than in respect to the quantum of the estate

Source R S 3 11-1, as am L. 1939, c 134, p 456, §1

3A:11-2. Computation of commissions; rates. On the settlement of accounts of executors, administrators, administrators with the will annexed, guardians, trustees under a will, and fiduciaries appointed under chapter 41 or 42 of this title for the estate or property, or any part

thereof, of an absentee, their commissions over and above their actual expenses shall be computed upon the following rates

On all income that comes into their hands, 5%, without court allowance thereof

On all corpus that comes into their hands 5% in cases where corpus receipts do not exceed \$50,000 and in cases in which the corpus receipts exceed \$50,000, 5% on the first \$50,000 of corpus and on the excess of \$50,000 of corpus such percentage as the court may determine on the intermediate or final settlement of their accounts, according to actual services rendered, but not to exceed 5% of the corpus receipts, provided, however, that if there are more than 2 fiduciaries, the court may allow corpus commissions in excess of 5% at the rate not exceeding 1% for each additional fiduciary, and

provided, further, that in any case in which the administration of the fiduciary or fiduciaries has extended or extends beyond a period of 25 years, corpus commissions for such additional years may be allowed at the rate not exceeding one-fifth of 1% per annum, irrespective of the number of fiduciaries.

Source C 3 11-2 2, L 1949, c 225, p 710, §1, C 3 11-2 1, L 1942, c 258, p 702, §1

3A:11-3. Commissions on real estate When a fiduciary comes into the possession of real estate and such real estate is not sold during the administration of the estate, trust or guardianship, the reasonable value thereof may be considered corpus receipts for the purpose of fixing corpus commissions

Source C 3 11-2 1, L 1942, c 258, §1

Note of Reporter The above proposed statute extends the present law in these respects

First, it covers a guardian as well as an executor, administrator c t a or trustee, second, it applies not only to real estate which comes into possession of the fiduciary on the death of a decedent, but also to real estate acquired subsequent to the creation of the estate or trust, as where real estate is acquired on the foreclosure of a mortgage (which under the statute is to be regarded as assets of the fiduciary)

3A:11-4. Commissions of non-testamentary trustee. On the settlement of the account of a non-testamentary trustee, as defined in section 3A 10-15 of this title, the court shall allow him such fees or commissions as may have been agreed upon by the instrument creating the trust, and in the absence of any express provision concerning fees and commissions, shall make such allowance therefor as would be payable to a fiduciary under this chapter for the same or similar purposes

Source C 3 10-30, L 1938, c 108, §8

Note of Reporter This statute, which was formerly applicable solely to prerogative court and orphans' court actions, becomes under the revision applicable to actions in the nature of chancery court actions

3A:11-5. Provision in will for specific compensation. Where provision is made in a will for specific compensation to a fiduciary or fiduciaries, such compensation shall be deemed full payment for services in lieu of commissions as set forth in 3A 11-2, unless said fiduciary or fiduciaries shall by writing filed with the surrogate or clerk of the superior court renounce such specific compensation

Source R S 3 11-5

3A:11-6. Disputes between fiduciaries as to apportionment. When a difference arises between fiduciaries accounting in the superior or county court, concerning the apportionment of commissions between them, such court shall determine the same, having regard to their respective services

Source R S 3 11-6

3A:11-7. Fiduciary removed from office; forfeiture of commissions. Where a fiduciary is removed by the superior or county court for any cause, the court may direct that his commission be forfeited

Source R S 3 11-7

3A:11-8. Legal fees for attorney also serving as fiduciary. On the settlement of the account of a fiduciary in the superior or county court, if the fiduciary is a duly licensed attorney of this state and, as such, shall have performed professional services in addition to his fiduciary duties, the court before which the account shall be presented for settlement shall, in addition to the commissions provided by section 3A 11-2, allow him a just counsel fee. If more than 1 fiduciary shall have performed such professional services, the court shall apportion the fee among them according to the services rendered by them respectively

Source R S 3 11-8

Chapter 12. DISCHARGE AND REMOVAL OF FIDUCIARIES.

Section	
3A 12-1	Discharge from office of fiduciary, account, allowances
3A 12-2	Discharge from particular trust, effect
3A 12-3	Joint application for discharge

Section	
3A 12-4	Removal for cause
3A 12-5	Discharge or removal not to release fiduciary or sureties from certain liabilities

3A:12-1. Discharge from office of fiduciary; account; allowances. A fiduciary may be discharged from the further duties of his office by the superior court when the appointment was made or letters were issued by that court or the surrogate of the county

The court shall examine into the matter and if sufficient reason for the discharge appears the court may grant it unless the discharge will be prejudicial to the estate or persons interested therein or for any other reason the discharge ought not to be granted

A discharge so granted shall discharge the fiduciary of all further duties of his office except

accounting for and paying over the money and assets with which he is chargeable by virtue of his office

If the fiduciary is discharged the court shall make such orders respecting his commissions as may be just and equitable

Source R S 3 12-1

3A:12-2. Discharge from particular trust; effect. Where a fiduciary is appointed by a will to perform a particular trust thereunder, he may be discharged from the performance thereof by the superior court when the appointment was made or letters were issued by that court, or by the county court when the appointment was

made or letters were issued by that court or the surrogate of the county

The court may grant such discharge and the fiduciary shall be thereby relieved of all further duties and liabilities with respect to such trust, except accounting for and paying over all moneys or assets pertaining to the trust, for which he is accountable, to his successor

Source R S 3 12-2

3A:12-3. Joint application for discharge. When there is more than 1 fiduciary they may all, or any 1 or more of them, be discharged

Source R S 3 12-3

3A:12-4. Removal for cause. The superior court or the county court, according to whether the appointment was made or letters were issued by the superior court or the appointment was made or letters were issued by the county court or surrogate, may remove a fiduciary from office when

a After due notice of an order or judgment of the court so directing, he neglects or refuses, within the time fixed by the court, to file an inventory, render an account or give security or additional security,

b After due notice of any order or judgment of the court made under its proper authority, he neglects or refuses to perform or obey the same within the time fixed by the court; or

c When in an action for the removal of the fiduciary, it appears that—

1 The fiduciary has embezzled, wasted or misapplied any part of the estate committed to his custody, or has abused the trust and confidence reposed in him,

2 The fiduciary has removed from the state or does not reside therein and neglects or refuses to proceed with the administration of the estate and perform the duties and trusts devolving upon him;

3 The fiduciary is of unsound mind or mentally incapacitated for the transaction of business, or

4 One of 2 or more fiduciaries has neglected or refused to perform his duties or to join with the other fiduciary or fiduciaries in the administration of the estate committed to their care whereby the proper administration and settlement thereof is or may be hindered or prevented

Source R S 3 12-4

3A:12-5. Discharge or removal not to release fiduciary or sureties from certain liabilities. The discharge or removal of a fiduciary for any cause authorized by this subtitle shall not release or discharge him or his surety or sureties, or any of them, from liability for the estate, or any part thereof, which has been received or ought to have been received by him or them, or for any neglect, default, miscarriage or breach of trust in the execution of his office.

Source R S 3 12-5

Chapter 13. ACTIONS BY OR AGAINST FIDUCIARIES.

Section

Article 1 In General

- 3A 13-1 Action by qualifying executors alone
- 3A 13-2 Action by majority of 4 or more fiduciaries
- 3A 13-3 Several fiduciaries sued, judgment and execution
- 3A 13-4 Administrators of any kind may sue or be sued
- 3A 13-5 No action against executor or administrator within 6 months, exceptions
- 3A 13-6 Actions against fiduciaries, proof of proper administration
- 3A 13-7 Action instituted by or against foreign fiduciary
- 3A 13-8 Substitution of foreign executor or administrator in pending action
- 3A 13-9 Foreign fiduciary, security for costs
- 3A 13-10 Recovery of damages for injury to property subsequently transferred

Article 1 IN GENERAL

3A:13-1. Action by qualifying executors alone. The executor or executors who qualify may maintain an action in any court of this state without joining any executor who has renounced or failed to qualify.

Source R S 3 13-1

3A:13-2. Action by majority of 4 or more fiduciaries. When 4 or more fiduciaries qualify under a will, a majority thereof may bring any action in any court of this state, in the names of the majority, on a debt, note, bond or obligation due to their decedent. An action so brought

Section

Article 2 Discovery.

- 3A 13-11 Discovery of assets in action by fiduciary
- 3A 13-12 Discovery in action against fiduciary

Article 3 Power of Attorney for Service of Process

- 3A 13-13 "Process" defined
- 3A 13-14 Fiduciary to file power of attorney, requisites of power
- 3A 13-15 Service of process
- 3A 13-16 Nonresident fiduciaries heretofore empowered, notice to file power of attorney
- 3A 13-17 Grants to fiduciary voided upon failure to file power of attorney, appointment of substitute
- 3A 13-18 Construction of powers of attorney heretofore filed

and judgment recovered thereon in the names of such majority shall be as valid and effectual as if brought by and in the names of all the qualified fiduciaries

Source R S 3 13-2

3A:13-3. Several fiduciaries sued; judgment and execution. In a civil action in any court of this state against 1 or more executors or administrators, such of them as are returned served shall answer to the plaintiff on behalf of all of them

If, in such an action, judgment go for plaintiff

he shall have judgment and execution against all the executors or administrators named in the process, to be made of the personal property of the decedent

Source R S 3 13-3

3A:13-4. Administrators of any kind may sue or be sued. Administrators, of whatever kind or description they may be, shall have actions to demand and recover, in the same manner as executors, the debts due to the decedent, and shall answer to others, to whom the decedent was holden and bound, in the same manner as executors shall answer, and shall be accountable as are executors

Source R S 3 13-4

3A:13-5. No action against executor or administrator within 6 months; exceptions. To enable executors or administrators to examine into the condition of the estate and to ascertain the amount and value thereof and the debts to be paid therefrom, no action, except for funeral expenses, shall be brought or maintained against executors or administrators within 6 months after probate or letters of administration have been granted, as the case may be, unless by special leave of the court wherein the action is brought, and, if such leave is given, no execution shall issue within the said period of 6 months

Source R S 3 13-5

3A:13-6. Actions against fiduciaries; proof of proper administration. The omission of a fiduciary, in an action against him in a representative capacity, to plead that he has fully administered the estate, or to plead the extent to which he has administered the same, shall not preclude him, in an action against him personally on a judgment obtained in the original action against him in representative capacity, from proving his due administration of the estate, but he must give notice, 20 days before trial, of his intention to prove such administration

Source R S 3 13-6

3A:13-7. Action instituted by or against foreign fiduciary. Any fiduciary by virtue of letters or authority obtained in another state, country or jurisdiction upon the estate of any person who died a resident of such state, country or jurisdiction, or as to any ward resident therein or trust established under the laws thereof, may maintain, or be made a party defendant to, any action in any court of this state, as if his letters had been granted in this state, provided that prior to, pending or subsequent to the action, there be filed in the office of the clerk of the superior court an exemplified copy of his letters testamentary or of administration or, if the action affects real estate in any county of this state, then either in said office or the office of the surrogate of that county.

Source R S 3 13-7, as am L 1938, c 140, §1

3A:13-8. Substitution of foreign executor or administrator in pending action. If after the

institution of any action in any court of this state a party dies resident in another state, country or jurisdiction and the claim is not extinguished by his death, his executor or administrator by virtue of letters obtained in that state, country or jurisdiction may join himself or be made a party defendant to the action before or after the judgment, as if his letters had been granted in this state; provided that pending or subsequent to the action, there be filed in the office of the clerk of the court an exemplified copy of his letters testamentary or of administration or, if the action affects real estate in any county of this state, then either in the office of the clerk of the superior court or the office of the surrogate of that county

Source R S 2 26-25 and 26, cf Rule 3 25-1

3A:13-9. Foreign fiduciary; security for costs. When a fiduciary referred to in sections 3A 13-7 and 3A 13-8 is plaintiff in the action, security for cost may be required from him as in the case of nonresidents

Source R S 3 13-7 and R S 2 26-26, R S 3 13-7, as am L 1938, c 140, p 295, §1

3A:13-10. Recovery of damages for injury to property subsequently transferred. A person injuring, damaging or destroying property while in the hands of a fiduciary shall be liable to the fiduciary in an action for damages for the benefit of his cestui que trust or persons in interest, and the fiduciary's right to substantial damages shall not be affected by the fact that he may have transferred or conveyed the property to his cestui que trust, or other person, after the time of the injury, damage or destruction and before action brought

Source R S 3 13-8

Article 2. DISCOVERY

3A:13-11. Discovery of assets in action by fiduciary. The county court of the county wherein letters testamentary or of administration, guardianship or trusteeship were issued, or the superior court, if letters were issued by that court, may, upon representation by the fiduciary of his belief that a person has possession of personal property of his decedent, ward or trust, or knowledge of the existence or whereabouts thereof, require such person to appear before it and make discovery of his possession of, or knowledge of the existence or whereabouts of personal property of the decedent, ward or trust by the production of books, papers or securities relating to such estate, guardianship or trusteeship, or the examination of such person and other witnesses. The court may take such proceedings for the recovery of assets so discovered as may be taken in like cases in the superior court

Source R S 3 13-9

3A:13-12. Discovery in action against fiduciary. The county court of the county wherein letters testamentary, of administration, guardianship or trusteeship were issued or the superior court,

if letters were issued by that court, may, if it shall appear that such fiduciary may have wasted, embezzled or misapplied the estate intrusted to him, compel discovery to be made of the condition of the estate by the production of books, papers, securities and documents relating to the estate, or the examination of such fiduciary and other witnesses. The court may take such proceedings for the protection of such estate as may be taken in like cases in the superior court.

Source R S 3 13-10

Article 3 POWER OF ATTORNEY FOR SERVICE OF PROCESS

3A:13-13. "Process" defined. The word "process" as used in this article shall include any summons, subpoena, writ, attachment and levy thereunder, garnishment, rule, order, notice, decision, judgment or execution and levy thereunder, or any other process whatsoever, that may lawfully be issued out of any court of this state against such fiduciary in any proceeding affecting the estate which he may represent or affecting the property or interest of any beneficiary of, or interested in, such estate or against the property or interest of any such beneficiary which is held or claimed to be held by such fiduciary for the account or benefit of such beneficiary.

Source R S 3 13-11

3A:13-14. Fiduciary to file power of attorney; requisites of power. Every fiduciary, whether or not a resident within this state, who is granted letters testamentary or of administration, trusteeship or guardianship within this state or authority and power to act within this state in his fiduciary capacity shall, at the time of the grant, or before he undertakes to perform his duties under said authority or power, file a power of attorney with the surrogate of the county or clerk of the court granting such letters or authority and power, which power of attorney shall be duly executed in writing, shall set forth the post-office address, street and number, of the fiduciary and, by sufficient language, constitute the surrogate or clerk with whom the same is filed, and his successors in office, his true and lawful attorney to receive process affecting the estate in charge of the fiduciary, or any

interest therein, with the same force and effect as if the process were duly served on the fiduciary within this state.

Source R S 3 13-12, as am L 1941, c 138, p 467, §1

3A:13-15. Service of process. Service of process, under the provisions of this article, shall be made by leaving a copy of the process with the surrogate or clerk, or with a deputy or a clerk employed in his office, together with a fee of \$2 00 to be taxed in the costs.

The surrogate, deputy surrogate or clerk shall forthwith notify the fiduciary of such service by mailing a letter with a copy of the process served inclosed, with full postage prepaid, directed to the fiduciary at the post-office address given in the power of attorney.

Source R S 3 13-13

3A:13-16. Nonresident fiduciaries heretofore empowered; notice to file power of attorney. The surrogate or clerk may, in his discretion, and shall, upon request of any person interested, notify any nonresident fiduciary appointed prior to April 14, 1930, to file with him the same power of attorney that is required by section 3A 13-14 of this title. This notice may be served by mailing a letter with full postage prepaid, directed to the fiduciary at the post-office address given in any power of attorney filed by him pursuant to law prior to April 14, 1930.

Source R S 3 13-14

3A:13-17. Grants to fiduciary voided upon failure to file power of attorney; appointment of substitute. If a power of attorney is not executed and filed within 10 days after notice is served upon the nonresident fiduciary, either in person or by mail as may be directed by the court, or in the manner prescribed by section 3A 13-16 of this title, or if, at any time, the fiduciary revokes a power of attorney already given, any power or authority which may have been granted to the fiduciary by any surrogate, judge or court of this state shall forthwith be revoked by the court which granted such letters or authority and power.

Source R S 3 13-15

3A:13-18. Construction of powers of attorney heretofore filed. Powers of attorney filed by fiduciaries pursuant to law prior to April 14, 1930, shall remain valid and of full effect.

Source R S 3 13-16

Chapter 14. PAYMENTS TO EXECUTORS, ADMINISTRATORS AND TRUSTEES; IN GENERAL.

Section

3A 14-1 Payments to and acts by foreign fiduciary before letters granted in this state, validity

Section

3A 14-2 Payments to fiduciaries, receipts, application of payments

3A:14-1. Payments to and acts by foreign fiduciary before letters granted in this state; validity. A payment by a resident or citizen of this state to a fiduciary appointed in another

state, of, or on account of, a debt due to his decedent, made before letters are granted in this state, shall be as valid and effectual as if made to a fiduciary duly appointed in this state,

and the foreign fiduciary may, before letters are granted in this state, release and discharge real or personal estate from a mortgage, judgment or other lien or encumbrance held by his decedent, with like effect as if he had received letters in this state.

Source. R S 3 14-1

3A:14-2. Payments to fiduciaries; receipts; application of payments. The receipt, or acknowledgment in writing, whether by deed or other-

wise, given by a fiduciary for money paid to and received by him by reason, or in the exercise, of a duty, trust, or power, shall be full and sufficient discharge for money therein expressed to be received, and the person so paying shall be thereby relieved of responsibility for the application of the money and shall not be answerable for loss or misapplication, unless the contrary be expressly declared by the instrument creating the duty, trust or power.

Source R S 3 14-2

Chapter 15. Blank.

Chapter 16. INVESTMENTS.

Section	
3A 16-1	Investments authorized in general
3A 16-2	Reliance on financial publications, fiscal year, coverage, application of this chapter
3A 16-3	Record of participation certificates to be kept
3A 16-4	United States securities issued on discount basis
3A 16-5	Investment in senior parts of mortgages or interests in mortgages
3A 16-6	Investment in mortgages or interests in mortgages subject to assessments and reserved rights
3A 16-7	Extensions or renewals of mortgages when real estate valuation depreciated
3A 16-8	Corporate fiduciary may register securities in name of nominee without disclosing fiduciary capacity
3A 16-9	Real estate mortgages, premium

Section	
3A 16-10	Guaranteed investments, premiums authorized
3A 16-11	Investments by fiduciary legal when made continued legal
3A 16-12	Continuance of testator's investments in certain cases
3A 16-13	Continuation of trust investments in non-legals
3A 16-14	Directions of court concerning retention of investments
3A 16-15	Sale of personalty and reinvestment thereof by guardian
3A 16-16	Investment of trust funds, change in conditions, application to court
3A 16-17	Investment of moneys lawfully retained by fiduciaries
3A 16-18	Blank

3A:16-1. Investments authorized in general. A fiduciary whose duty it may be to loan or invest funds intrusted to him in his fiduciary capacity may, without special order of any court, invest and reinvest such funds, or any part thereof, and the income derived therefrom, in any of the following

UNITED STATES BONDS

a Stocks or bonds or interest bearing notes or obligations of or guaranteed by the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof,

STATE BONDS

b Bonds or interest bearing notes or other obligations of or guaranteed by this state or bonds authorized by its laws issued or to be issued by any commission appointed pursuant to any law of this state;

BONDS OF OTHER STATES, TERRITORIES OR INSULAR POSSESSIONS

c Bonds of any state in the union or of any territory or insular possession of the United States issued by authority of the legislature thereof, provided such state, territory or insular possession has not, within 120 days next preceding such investment, defaulted in the payment of any part of either principal or interest on any of its bonds so issued,

MUNICIPAL OR SCHOOL BONDS

d Bonds or interest bearing notes or obligations of any county, city, town, township, borough, village or other municipal or political subdivision of this state issued under authority of a law of this state, or in bonds of any public school district, water district, union-graded school district or regional board of education of this state, or in refunding or renewal bonds of any such school district, water district or board of education issued under authority of a law of this state, provided, that at the time of making any such investment the issuer of such bonds shall not be in default in the payment of any principal of or interest upon any bonds issued by it,

BONDS OF COUNTIES, MUNICIPALITIES AND SCHOOL DISTRICTS OF OTHER STATES

e Stocks, bonds, interest bearing notes or obligations of any county, city, town, township, borough, village or school district of any other state of the union issued pursuant to the authority of any law of such state; provided, that such county, city, town, township, borough, village or school district shall not have been in default in the payment of any principal or interest on any of its stocks, bonds, interest bearing notes or obligations within 120 days next preceding such investment, provided, that such

county shall have a population of not less than 20,000 and that any such city, town, township, borough, village or school district shall have a population of not less than 5,000;

REVENUE BONDS

f Revenue bonds issued by a unit, provided, that the unit shall not, at the time of making the investment, be in default in the payment of principal or of interest on any of the revenue bonds issued by it or in the performance of any of the covenants, agreements or other provisions of the revenue bonds issued by it and shall not be in default with respect to any of the provisions or requirements of the enabling legislation relative to such revenue bonds, provided, further, that such enabling legislation requires the unit to fix, maintain and collect for the utility service furnished by the unit charges adequate to pay the principal of and interest upon all revenue bonds payable from such revenues and to provide for the operation and maintenance of the utility including provision for all repairs and renewals, and all other charges and liens whatsoever payable from such revenues and to pledge a sufficient amount of such revenues for the payment of principal of and interest on such revenue bonds and other obligations of the unit having a lien or charge on such revenues equal to or prior to the lien or charge of the revenue bonds thereon. For the purposes of this paragraph "revenue bonds" mean any bonds, including refunding bonds, or other interest bearing obligations of a unit for the payment of the principal of and interest on which the revenues derived from a utility owned or operated by the unit which issued such bonds or obligations, are pledged, or any such bonds or obligations additionally secured by a pledge of the taxing power or other revenues of the unit, "unit" means a unit authorized to construct, own or operate a utility as "utility" is hereinafter defined and includes any state, any political subdivision of any state, any agency or instrumentality, corporate or otherwise, of any state or of any political subdivision of any state, including but not by way of limitation any county, city, town, township, village, authority, district, commission, agency or instrumentality of any state or of any political subdivision of any state, any commission, board, agency or other public body, corporate or otherwise, created by any act of congress or by any state, or pursuant to a compact between any 2 or more states or between any 2 or more political subdivisions, authorities, districts, commissions, agencies or instrumentalities of the same state, or between any 2 or more political subdivisions, authorities, districts, commissions, agencies or instrumentalities of any 2 or more states, or any corporation which is wholly owned, directly or indirectly by any of the foregoing; "state" means any of the United States and any territory or insular possession of the United States, "enabling legislation" means any act or resolu-

tion of congress or of the legislature of any state or of the legislatures of any states, or any act, ordinance, resolution or other authorization by or of a unit or by or of the governing body of any unit, authorizing or providing for the issuance of revenue bonds, or any mortgage, trust deed, trust indenture, trust agreement or other instrument executed as security for revenue bonds, "utility" means any waterworks system, gas system, electric light system, express or other highway or highways, bridge, tunnel, ferry or other public utility service or operation, or any combination of 2 or more of the foregoing, "system" means a supply or generating system, transmission or distribution system or any combination of supply, generating, transmission or distribution systems, and all appurtenances thereof,

BONDS OF THE DOMINION OF CANADA AND PROVINCES

g Bonds, notes or other interest bearing obligations issued, guaranteed, or assumed by the Dominion of Canada or by any of the provinces of the Dominion of Canada,

RAILROAD BONDS AND EQUIPMENT OBLIGATIONS

h (1) Bonds issued, guaranteed, or assumed by a railroad corporation organized and existing under the laws of any state of the United States or of the District of Columbia or of the United States, the net earnings of which, including those of any predecessor company or companies, before deduction of federal income and profits taxes have been sufficient, in any 3 of the 4 fiscal years next preceding the date of purchase, to cover annual requirements for fixed charges, including contingent interest on income bonds, an average of 1½ times, provided, that neither net earnings nor fixed charges shall be deemed to include interest on bonds of its own or a subsidiary or lessor company repurchased or held as an investment by such railroad corporation; or in bonds secured by mortgage upon a railroad terminal, depot, tunnel or bridge used by 2 or more railroad corporations which have jointly and severally guaranteed the payment of principal and interest of such bonds or have otherwise covenanted or agreed to pay the same, at least 1 of which guarantors shall have net earnings as above, or in the bonds of any railway terminal or dock company of this state, secured by first mortgage on terminal or dock property fronting on the Hudson river or New York bay and having an assessed value for the purpose of taxation in excess of the amount of the entire issue of bonds, and used and occupied as dock or terminal facilities by any railroad now operating in this state, provided, that no part of the principal or interest of such bonds is in default at the time of making the investment,

h (2) Mortgage bonds of a railroad corporation organized and existing under the laws of any state of the United States or of the District of Columbia or of the United States which are a

first lien or a collateral first lien on at least two-thirds of the mileage covered, of which at least one-half said rail mileage shall be main line mileage, the earnings of which allocable to such mileage are estimated to be on the average at least $1\frac{1}{2}$ times interest charges on such bonds for any 3 of the 4 fiscal years next preceding such investment; provided, that such a railroad corporation shall not have been in default on any part of the principal or interest of any of its bonds within 120 days next preceding such investment, except that nonpayment of contingent interest on income bonds, or nonpayment of interest on any bonds on which the payment of interest is discretionary rather than fixed, shall not constitute such a default. For the purpose of this paragraph, should the earnings of a railroad not be susceptible to exact allocation under the ordinary accounting methods of a railroad, information as to earnings may be obtained from any financial, statistical, investment or other publication or service referred to in paragraph a of section 3A 16-2 of this title;

h (3) Equipment obligations or certificates of a railroad corporation organized and existing under the laws of any state of the United States or of the District of Columbia or of the United States, secured by railroad equipment under equipment or car trust, lease or conditional sale, or by first lien thereon;

BONDS SECURED BY FIRST MORTGAGE

1. Bonds or other obligations secured by first mortgages on improved real estate in this state or in the states of New York or Pennsylvania including improved farm lands therein, provided, the amount of any such bond or other obligation and mortgage shall not at the time of making the investment therein exceed 60% of the estimated worth of the real estate covered by the mortgage and the rate of interest shall not be more than 6% per annum;

1. (a) Whenever a fiduciary owns or has an expressed or implied power of sale over any real estate, or any interest or interests therein, however acquired, he may, in the exercise of discretion, sell such real estate, or such interest or interests therein, upon such terms and conditions as he shall deem to be for the best interests of the estate or trust, and, as an incident to such sale, may invest in a bond or other obligation secured by a purchase money mortgage, which shall be a first lien upon the real estate or interest or interests therein sold, in any amount up to but not exceeding 80% of the sale price;

BONDS SECURED BY MORTGAGE ON LEASEHOLD OF CAMP MEETING ASSOCIATIONS

j Bonds secured by first mortgage on leasehold estates of real estate in this state of camp meeting associations; provided, however, that such real estate, except as to such leasehold, is free and clear of all liens and encumbrances

of every kind and character whatsoever, provided, further, that such leasehold at the time of the giving of said bond and mortgage has an unexpired term of not less than 25 years, and is a lease of the entire interest in such real estate, except the reversion thereof, provided, further, that no investment shall be made in excess of 60% of the appraised value of such leasehold estate and the improvements thereon, which appraisement may be made by a committee of any savings bank, banking institution, trust company or insurance company, and, in the case of an individual, by 2 persons appointed by any such individual for such purpose, provided, further, that any such camp meeting association shall consent to the giving of such bond and mortgage, subject, nevertheless, to all the conditions of the lease, provided, further, that no savings bank, banking institution, trust company or insurance company, organized under the laws of this state, and no person or corporation acting as executor, administrator, guardian or trustee shall make loans on leasehold estates of any such camp meeting association until the camp meeting association shall first have been approved for such purpose by the commissioner of banking and insurance of the state of New Jersey,

UTILITY BONDS

k Bonds, notes or other evidences of indebtedness of any public utility corporation organized under the laws of any state of the United States or of the District of Columbia or of the United States, not less than 70% of the gross operating revenues of which, on a consolidated basis, in the fiscal year next preceding such investment, was derived from operation of 1 or more of the following utility services, viz electric light or power, telephone or telegraph, steam, manufactured gas, natural gas or a mixture of manufactured and natural gas, provided, that the gross operating revenues of such corporation including predecessor and constituent corporations on a consolidated basis shall have averaged not less than \$2,000,000 00 per annum for the 3 fiscal years next preceding such investment; provided, further, that the net operating revenues of such corporation on a consolidated basis, including those of predecessor and constituent corporations, after all operating expenses and depreciation, but before state and federal income and profits taxes, available for fixed charges for rentals and interest, shall have averaged annually for the 3 fiscal years next preceding such investment not less than $1\frac{1}{2}$ times the average annual requirements during such period for such fixed charges, subsidiary preferred stock dividends and minority interests excluding intercompany items,

WATER COMPANY BONDS

l The bonds, notes or other evidences of indebtedness issued, guaranteed, or assumed by a public utility corporation organized and existing under the laws of any state of the United

States or of the District of Columbia or of the United States not less than 80% of the revenues of which are, at the time of making such investment, derived from the sale of water to consumers through a distribution system owned or leased by it, or which such corporation has otherwise covenanted or agreed to pay or cause to be paid, whether by lease, indorsement, supplemental indenture or otherwise, provided, that the gross operating revenues of such corporation, including those of predecessor and constituent corporations, shall have averaged not less than \$500,000 00 per annum for the 5 fiscal years next preceding such investment, provided, further, that the net operating revenues of such corporation, including those of predecessor and constituent corporations, after all operating expenses but before deducting charges for depreciation, renewals and state and federal income and profits taxes, available for fixed charges for rentals and interest on all outstanding debt, shall have averaged annually for the 3 fiscal years next preceding such investment, not less than 1½ times the average annual requirement during such period for such fixed charges excluding intercompany items,

UTILITY PREFERRED STOCKS

m. Preferred stocks issued, guaranteed, or assumed by a public utility corporation organized and existing under the laws of any state of the United States, or of the District of Columbia, or of the United States, not less than 70% of the gross operating revenues of which in the fiscal year next preceding such investment was derived from the operation of 1 or more of the following utility services, viz artificial gas, the sale of natural gas or of a mixture of natural and artificial gas, steam, electric light or power, telephone, telegraph, or water, provided, that such preferred stock shall be cumulative as to dividends and shall not be preceded, as to claim on dividends or assets of the corporation, in case of liquidation or dissolution, by any other class of stock; provided, further, that the gross operating revenues on a consolidated basis of such corporation, including those of predecessor and constituent corporations, shall have averaged not less than \$5,000,000 00 per annum for the 3 fiscal years next preceding such investment, provided, further, that the mortgage bonds and debentures of the corporation, if such are outstanding, shall be legal investments under this act; provided, further, that the net operating revenues of the corporation on a consolidated basis including those of predecessor and constituent corporations after all operating expenses, taxes and depreciation shall have averaged annually for the 3 fiscal years next preceding such investment not less than 1½ times the average dividend requirements on such preferred stock, any other equally ranking preferred stock and for fixed charges for rentals and interest during such period, excluding intercompany items;

INDUSTRIAL BONDS, ET CETERA

n The bonds, notes or other evidences of indebtedness of any industrial corporation organized under the laws of any of the following any state of the United States, the District of Columbia, the United States, the Dominion of Canada or any province of the Dominion of Canada, provided, that in each of the 3 fiscal years next preceding such investment, the gross revenues on a consolidated basis of the said industrial corporation shall not have been less than \$10,000,000 00; provided, further, that the balance of income available for the payment of interest, after deducting all operating expenses, depreciation and taxes, except state, federal, or provincial income and profits taxes, shall have averaged annually for the 5 fiscal years next preceding such investment, twice the average annual interest charges, provided, further, either that the current assets of said industrial corporation on a consolidated basis, as shown by its latest published statement prior to the making of such investment, shall be at least 1½ times the current liabilities, or that the difference between the current assets and current liabilities, represented as net current assets or net working capital, as shown by such latest published statement, shall not be less than the total indebtedness of the corporation, excluding any indebtedness included among the current liabilities;

INDUSTRIAL PREFERRED STOCKS

o Preferred stocks of any industrial corporation organized under the laws of any state of the United States or of the District of Columbia or of the United States; provided, that such preferred stock shall be cumulative as to dividends, provided, further, that in each of the 3 fiscal years next preceding such investment, the gross revenues of the said industrial corporation on a consolidated basis shall not have been less than \$10,000,000 00, provided, further, that the balance of income available for the payment of interest and dividends on such preferred stock and on any other preferred stock ranking equally with or senior to such preferred stock together, after deducting all operating expenses, depreciation and taxes, shall have averaged annually for the 5 fiscal years next preceding such investment, 2½ times the average annual interest charges and preferred dividend requirements on such preferred stock and on all senior and equally ranking preferred stocks; provided, further, either that the current assets of said industrial corporation on a consolidated basis, as shown by its latest published statement prior to the making of such investment, shall be at least 1½ times the current liabilities or that the difference between the current assets and current liabilities, represented as net current assets or net working capital, as shown by such latest published statement, shall not be less than the total indebtedness of the corporation and all equally ranking and senior preferred stocks to-

gether, excluding any indebtedness included among the current liabilities;

BONDS OF JOINT STOCK OR FEDERAL LAND BANK

p Bonds issued by a joint stock land bank authorized to do business in this state or by a federal land bank, organized pursuant to an act of congress entitled "An Act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes", approved July 17, 1916 (12 U S C A. §641 et seq);

In consolidated bonds of the 12 federal land banks issued under and pursuant to the above-mentioned act of congress as now or hereafter amended and known as the "federal farm loan act",

CERTIFICATES OF DEPOSIT AND SAVINGS ACCOUNTS

q Interest bearing time certificates of deposit of, or by making interest bearing time deposits in savings or special interest accounts in any bank, trust company, mutual savings bank or stock savings bank or national bank doing business in this state, including, where the fiduciary is such a corporation, such certificates of deposit of or such deposits with itself in its banking department, provided, however, that a fiduciary shall not invest more than \$5,000 00 of any 1 trust or estate in time certificates of deposit of, or deposit more than \$5,000 00 of any 1 trust or estate as a time deposit in, any 1 bank, trust company, mutual savings bank, stock savings bank or national bank doing business in this state including itself where the fiduciary is such a corporation,

INVESTMENTS LEGAL FOR SAVINGS BANKS

r Any loans or securities which are or hereafter may be made lawful investments under the statutes of this state, for savings banks of this state;

SHARES OF SAVINGS AND LOAN ASSOCIATIONS

s Shares of or accounts in savings and loan associations organized under the laws of this state, or federal savings and loan associations organized under the laws of the United States, the principal office of which is located in New Jersey, provided, that the accounts of the association whether state or federally chartered are insured by the federal savings and loan insurance corporation, pursuant to title 4 of an act of congress entitled "national housing act", approved June 27, 1934 (12 U S C A §1724 et seq), supplemented or amended, or by any other corporation created or organized under the laws of the United States, which corporation is an instrumentality of the United States, provided, however, that such investment shall not exceed

the aggregate amount for which any member or investor of any such association shall be insured, BONDS SECURED BY MORTGAGE ON LANDS ACQUIRED AT TAX SALE

t Bonds secured by mortgage, which shall be a first lien upon real estate, the title to which shall have been secured by the owner or prior owners through a certificate of tax sale foreclosed in the former court of chancery or the superior court of New Jersey, provided, the real estate shall be estimated to be worth at least twice the amount loaned, and the rate of interest is not less than 3% nor greater than 6% per annum;

TRUST MORTGAGES AND PARTICIPATION CERTIFICATES

u. Shares or parts of bonds secured by mortgage or bonds secured by trust mortgage, and participation certificates or coupon bonds which entitle the holder to a proportionate share in a series or number of mortgages and bonds, or extensions or renewals thereof, deposited under a trust agreement with a trust company, bank or title guarantee corporation organized under the laws of this state, or a national bank authorized to do business in this state, provided, that the securities authorized in this paragraph u shall be a first lien upon improved real estate and the amount secured by the mortgages shall not, at the time the loan is made, exceed 60% of the estimated worth of the real estate covered by the respective mortgages and the rate of interest not less than 3 nor greater than 6% per annum; and provided further, that no share or part of such bonds and mortgages or bonds secured by such trust mortgage shall be subordinate to any other bonds issued thereunder or subordinate to any prior interest therein; and provided further, that bonds and mortgages in parts of which a fiduciary invests trust funds or, in the case of trust mortgages, the trust mortgage, together with any guarantees of payment, insurance policies and other instruments and evidences of title relating thereto, shall be held for the benefit of the fiduciary and any other persons interested therein, by a trust company, bank or title guarantee corporation authorized to do business in this state, or jointly by such a corporation and an individual who is a citizen and bona fide resident of this state, and, in mortgages other than trust mortgages, there shall be executed by such corporation and delivered to each person who becomes interested in the bond and mortgage, a certificate stating that the corporation, or corporation and individual jointly, as the case may be, holds the instruments for the benefit of the fiduciary and any other persons therein interested, among whom may be included the aforesaid corporation or individual

Source R. S 3 16-1, as am L 1942, c 166, p 476, §1, L 1945, c 194, p 661, §1, R S 3 16-1 1, as am L 1940, c 132, p 286, §1, L 1949, c 92, p 410, §1, L 1940, c 58, p 169, §1, R S 3 16-2 and 3, L 1940, c 192, p 377, §1, as am L 1922, c 144, p 255, §1 [1924 Suppl

§72-37a], L 1926, c 305, p 506, §1, L 1927, c 81, p 144, §1, Suppl to L 1899, c 103, p 236
Note of Reporter. This incorporates the amendments to R S 3 16-1 since 1937

3A:16-2. Reliance on financial publications; fiscal year; coverage; application of this chapter.

FIDUCIARY MAY RELY ON FINANCIAL PUBLICATIONS

a A fiduciary, in determining if any bond, debenture, stock or other security or investment meets the requirements of section 3A 16-1 of this title or of a deed of trust, will or order of court having jurisdiction, governing the making of the investment, may rely and be fully protected in relying upon statistical, financial, corporate or other information as to such bond, debenture, stock or other security, and upon ratings or other opinion as to the financial or other status thereof, contained in or offered by any financial, statistical, investment, rating or other publication or service published for the use of and accepted as reliable by investors in like securities or investments or upon a copy of the prospectus prepared and filed with the securities and exchange commission in connection with a new issue;

DEFINITION OF FISCAL YEARS

b Wherever the term "fiscal years", is mentioned in section 3A 16-1, a fiduciary may, at its option, use consecutive 12-month periods, of the same total duration as the specified number of fiscal years, ending within 6 months next preceding the investment, and, if it elects to use other than fiscal years, wherever the term "the fiscal year next preceding the investment" is mentioned, it shall use the last 12-month period of such consecutive 12-month periods, in the case of a new issue of bonds or preferred stock whenever a period of years is specified in section 3A 16-1, such new issue shall be legal if the interest charges or preferred dividend requirements as specified in section 3A 16-1 would have been earned had such issue been outstanding during the period,

DEFINITION OF COVERAGE

c Wherever in section 3A 16-1 the requirement has been made as to the number of times fixed charges or fixed charges and preferred dividends shall be earned, the charges and dividend requirements on the amount of the debt or preferred stocks which have been called for redemption or which otherwise mature within 12 months, and for the payment of which funds have been set aside, shall be excluded from said computation. Whenever a new issue of bonds or preferred stock results in a change in the balance sheet or earnings statement of a company as shown in pro forma statements a fiduciary may use such pro forma statements in lieu of the last published statement or he may prepare such statements from figures supplied in connection with such new issue and if such statements meet the requirements of this section, such security shall be legal;

APPLICATION OF THIS AND PRECEDING SECTION

d. The provisions of sections 3A 16-1 and 3A 16-2 shall apply notwithstanding the fact that the fiduciary was appointed or the trust was created prior to the effective date hereof,

WHERE CHAPTER NOT APPLICABLE

e The provisions of this chapter shall not apply where the deed of trust, or the will, or any court having jurisdiction of the matter, specially directs in what securities or investments the trust fund shall be invested, and every such court shall have the power to specially direct by order or orders, from time to time, additional securities or investments, in its discretion, in which trust funds may be invested. An investment made in accordance with such special direction shall be legal, and no fiduciary shall be held liable for a loss in any such case

Source R S 3 16-1u to 1x, inclusive, L 1938, c 196, p 438, §1, as am L 1942, c 166, p 476, §1, L 1945, c 194, p 661, §1

3A:16-3. Record of participation certificates to be kept. A corporation, or corporation and individual jointly, issuing certificates described in section 3A 16-1u of this title, shall keep a record in proper books of account of all certificates issued pursuant to said section

Source R S 3 16-4

3A:16-4. United States securities issued on discount basis.

INCREASED VALUE TO BE INCOME

a Increments in value measured by increases in redemption values of United States savings bonds and United States treasury savings certificates issued upon a discount basis and not bearing interest pursuant to the act of congress, approved September 24, 1917, as amended (31 U S C A 757c), now or hereafter held by an executor, trustee or other fiduciary acting under a will, codicil, trust indenture, trust agreement or other trust instrument, under which income of the estate, trust or other fund in which such bonds or certificates are held is payable to an income beneficiary, shall be income whether or not such increments are actually realized by maturity or redemption of such bonds;

PAYMENTS TO INCOME BENEFICIARY ON ACCOUNT OF INCREASED VALUE.

b Such fiduciary may pay to the income beneficiary out of any principal funds in the fiduciary's hands or may transfer from the principal account to the income accounts the amounts of such increments or such amounts of such increments as the income beneficiary may be entitled to and in case such payment or transfer is so made the increments in value of such bonds or certificates, or such amounts of such increments as the income beneficiary may be entitled to, shall be added to and thereafter held as a part of the principal;

APPORTIONMENT OF INCREASED VALUE ON COMMENCEMENT OR TERMINATION OF RIGHT.

c Upon commencement of or upon termination of the right of the income beneficiary to receive income, that part of the increment in value of such bonds or certificates which accrued after the commencement of or up to the time of termination of right to receive income, respectively, shall be apportioned to income,

CONTRARY PROVISIONS OF WILL OR TRUST INSTRUMENT

d The provisions of this section shall not be applicable in any case where the will, codicil, trust indenture, trust agreement or other trust instrument specifically provides that increments in value of such bonds or certificates shall be principal

Source R S 3 16-10 1 to 10 4 inclusive, L 1942, c 287, pp 1111, 1112, §1 to §4 inclusive

3A:16-5. Investment in senior parts of mortgages or interests in mortgages. Any fiduciary, now or hereafter authorized to invest in bonds and mortgages, or shares or parts of mortgages or mortgage participation certificates, or shares or parts of bonds secured by mortgage, or bonds secured by trust mortgage, or participation certificates or coupon bonds entitling the holder to a proportionate share in a series or number of mortgages and bonds, or extensions or renewals thereof, hereinafter in this section and in sections 3A 16-6 and 3A 16-7 of this title referred to as "mortgages or interests in mortgages", may invest in a primary or senior part or portion of such mortgages or interests in mortgages if the primary or senior parts or portions do not exceed that proportion of the estimated worth or appraised value of the mortgaged real estate which is applicable to mortgage investments authorized to be made by such fiduciary, notwithstanding that the mortgage or trust mortgage also secures a secondary or junior part or portion thereof exceeding the authorized proportion of the estimated worth or appraised value of the mortgaged real estate applicable to mortgage investments by such fiduciary, and such fiduciary may enter into an agreement with other holders of interests in mortgages which makes the interest in the mortgage lien held by such fiduciary a primary or senior part or portion thereof, as aforesaid, and hold the same

Source R S 3 16-5

3A:16-6. Investment in mortgages or interests in mortgages subject to assessments and reserved rights. Except when the mortgaged real estate is subject to a condition or right of re-entry of forfeiture under which the first mortgage lien can be cut off, subordinated or otherwise disturbed, a fiduciary may invest in a mortgage or interests in a mortgage or mortgages notwithstanding that the mortgaged real estate may be subject in whole or in part to taxes or assessments that are not delinquent, or

to the effect of instruments creating or reserving mineral, oil or timber rights, rights of way, joint driveways, sewer rights, rights in walls, building restrictions or other restrictive covenants or a lease whereby rents or profits are reserved to the owner.

Source R S 3 16-6

3A:16-7. Extensions or renewals of mortgages when real estate valuation depreciated. A fiduciary holding a mortgage or interests in a mortgage or mortgages may, upon the maturity of the mortgage debt, or of a portion thereof, in the exercise of good faith and reasonable discretion, continue to hold, or enter into agreement for the extension or renewal of, such mortgage or interests in the mortgage or mortgages, notwithstanding that the estimated worth or appraised value of the mortgaged real estate shall have depreciated so that the mortgage lien then exceeds the proportion to the estimated worth or appraised value of the mortgaged real estate applicable to mortgage investments by such fiduciary, or that the mortgaged real estate may then have become subject to unpaid taxes, assessments or other municipal liens

Source R S 3 16-7

3A:16-8. Corporate fiduciary may register securities in name of nominee without disclosing fiduciary capacity. Any bank, trust company or savings bank incorporated under the laws of this state acting as fiduciary, and any national bank located in this state acting as fiduciary, and any bank, trust company or savings bank incorporated under the laws of another state which is authorized to act as a fiduciary in this state in accordance with the provisions of article 44 of "the banking act of 1948", and acting as such fiduciary may, when acting as sole fiduciary or when acting as co-fiduciary, with the consent of its co-fiduciary or co-fiduciaries, cause any certificates for shares of stock, bonds, debentures, notes or other securities, herein denominated "securities", held in fiduciary capacities, to be registered and held in the name of a nominee of the corporate fiduciary without disclosing the fiduciary capacity in which such securities are held, provided, that (1) the records of the fiduciary or fiduciaries and all accounts rendered by it or them shall at all times clearly show the ownership of the securities so registered, (2) such securities shall at all times be kept separate and apart from the assets of such bank, trust company, savings bank or national bank and (3) the nominee shall not have possession of or access to the securities. The corporate fiduciary shall be liable for any loss occasioned by the acts of the nominee with respect to securities so registered. Such co-fiduciaries are authorized to give the consent herein required. The provisions hereof shall not apply where any will, codicil, trust indenture or other trust instrument or where any order appointing or relating to any fiduciary or fiduciaries prohibits

such securities from being registered in the name of a nominee

Source R S 3 16-19, L 1944, c 114, p 316, §1, as am L 1950, c 312, §1

3A:16-9. Real estate mortgages; premium. COMMISSION AND OTHER CHARGES

a Any fiduciary authorized to loan or invest money intrusted to him in bonds or other obligations secured by first mortgages on improved real estate may purchase or invest in such bonds or other obligations so secured and may pay a premium therefor, brokers' commissions for the procurement thereof, title charges, attorneys' fees, recording fees, the cost of survey, the cost of United States internal revenue stamps, and other charges incidental to and incurred in connection with such purchase or investment.

PREMIUMS AND OTHER CHARGES PAYABLE OUT OF PRINCIPAL, AMORTIZED, OUT OF INCOME

b Such premiums, commissions and other charges paid under the authority of this section shall be paid out of the principal of the estate, trust or guardianship funds being administered by the fiduciary and may be amortized out of income in the same manner as premiums on other securities purchased by fiduciaries are amortized out of income

INAPPLICABLE WHEN

c The provisions of this section shall not apply where the trust indenture, deed, agreement, will or order of appointment otherwise expressly provides

Source L 1947, c 306, p 1023, §1 to §3 inclusive

3A:16-10. Guaranteed investments; premiums authorized. A fiduciary investing moneys of the estate may require such bonds or guarantees of payment as may seem prudent and all moneys paid therefor may be charged to or paid out of income, but in no case shall such premium exceed 1% per annum of the par value of the investment

Source R S 3 16-10

3A:16-11. Investments by fiduciary legal when made continued legal.

a Any investment made by a fiduciary, legal under the laws of this state when made, shall continue to be legal, anything in this chapter to the contrary notwithstanding,

b A fiduciary, who, in the exercise of good faith and reasonable discretion, continues to hold any investment made by the fiduciary which, when made, was legal under the laws of this state or authorized in a will or deed of trust governing the investment, or by an order of court having jurisdiction, shall not be accountable for any loss by reason of such continuance.

Source R S 3 16-1s, 1t, L 1938, c 196, p 438, §1, as am L 1945, c 194, p 661, §1

3A:16-12. Continuance of testator's investments in certain cases. When a testator has invested in municipal bonds or in bonds secured by mortgages, or in bonds or shares of stock

of a corporation, and the same come into the hands of his executor, administrator with the will annexed or trustee, to be by him administered, such fiduciary may, in the exercise of good faith and reasonable discretion, continue such investments and in such case he shall not be accountable for any loss by reason of such continuance

This section shall not apply where the last will and testament of any testator, or any court having jurisdiction of the matter, specially directs in what manner the fund shall be invested

Source R S 3 16-12

3A:16-13. Continuance of trust investments in non-legals. A fiduciary acting under a deed of trust, who, in the exercise of good faith and reasonable discretion, continues to hold any investments placed in or added to a trust by the creator thereof, shall not be accountable for any loss by reason of such continuance notwithstanding that such investments may not be authorized by the laws of this state for the investment of trust funds; except that this section shall not apply if the deed of trust specifically prohibits the continuance of such investments, nor shall this section modify any authorization in the deed of trust with respect to such continuance

Source R S 3 16-20, L 1950, c 329, p , §1

3A:16-14. Directions of court concerning retention of investments.

a When bonds, mortgages, shares of stock, other securities or other property come to a fiduciary as part of the assets which he is to administer, or as part of the estate he is to control or manage, the fiduciary may institute proceedings before the court by which he was appointed or which has jurisdiction of his accounts for direction as to the sale, conversion or retention as an investment of such securities

The court, upon a consideration of all the circumstances of the case and the evidence produced, shall make such order and direction in the premises as it shall deem most advantageous to the estate or trust fund and the interests of persons entitled to share therein

This section shall not apply where a deed of trust or will specially directs the manner in which the funds shall be invested

b A fiduciary continuing to hold securities as investments in accordance with an order or direction of court pursuant to this section shall not be held accountable for any loss by reason of such continuance This section shall not be deemed to limit the effect of section 3A 16-12 or section 3A 16-15

Source R S 3 16-14, 16

3A:16-15. Sale of personalty and reinvestment thereof by guardian. A guardian of a minor or mental incompetent may, upon approval of the court having jurisdiction over his accounts as guardian, sell any stocks, securities or other personal property of his ward and invest the

proceeds derived therefrom in such securities as are recognized by law as legal investments for trustees

Source R S 3 16-13

3A:16-16. Investment of trust funds; change in conditions; application to court.

a In all cases where by reason of a change in conditions which has or shall have occurred, or which may be reasonably foreseen, the objects and purposes of any trust heretofore or hereafter created by deed, will or other instrument, or by order of court, might be defeated in whole or in part by the investment or continuance of the investment of all the funds of such trust in the kinds or classes of securities to which the trustee is or shall be limited by the statutes of this state or by the instrument or instruments or court order creating such trust, any trustee or beneficiary of such trust may institute proceedings in the superior court to secure authority permitting or directing the trustee or trustees of such trust to invest all or a part of the funds thereof in other kinds or classes of investments;

b If the court shall find that by reason of a change in conditions which has or shall have occurred since the creation of such trust or by reason of a change in conditions which may be reasonably foreseen the objects and purposes of the trust might be defeated in whole or in part by the investment, or continuance of the investment, of all the funds of such trust in the kinds or classes of investments to which the trustee is then limited by the statutes of this state or by the instrument or instruments or court order creating such trust and that the objects and purposes of the trust and the interests of all the beneficiaries thereof, whether vested or contingent, would be promoted by the investment of all, or some part, of the trust funds in classes or kinds of investments other than those specified by the statutes of this state or by the instrument or instruments or court order creating such trust, the court shall by its order or judgment, notwithstanding that the trust so created may be in default in respect to the

terms of the instrument or instruments creating such trust, authorize or direct the trustee of such trust to invest the whole, or such part thereof as it shall designate, in any class or classes of investments, including common or preferred stocks of corporations of this state or of any other state or country, which in its judgment will promote the objects and purposes of the trust and the interests of all the beneficiaries thereof, provided, that the court shall not authorize or direct the purchase of any class of common or preferred stock of any corporation unless such corporation shall have been organized and engaged in the conduct of its business for 5 calendar years immediately preceding the purchase of the stock of such corporation,

c As used in this section "trust" shall include "guardianship", "trustee" shall include "guardian", and "beneficiary" shall include "ward"

Source R S 3 16-17, 18

3A:16-17. Investment of moneys lawfully retained by fiduciaries.

a A fiduciary lawfully required to retain moneys without investing them may, by direction of the court to which the fiduciary is accountable, put out such moneys at interest upon such security and for such length of time as the court may allow. If the estate would be materially benefited by such direction the fiduciary shall apply therefor, and, upon neglect so to apply, shall be accountable for any loss occasioned thereby;

b If the security so taken, bona fide and without fraud, shall prove insufficient, loss occasioned thereby shall be the loss of the person, whether legatee, ward, cestui que trust or other person, whose estate or interest is so invested;

c If the fiduciary cannot make proper investment or loan as directed by the court, he shall be accountable for the principal money only until it can be put out at interest as aforesaid or invested, but if he shall use any moneys of the estate in his hands for his own use he shall be liable for both principal and interest

Source R S 3 16-9

Chapter 17. SALE OR OTHER DISPOSITION OF REAL ESTATE BY FIDUCIARIES.

Section	Article 1 By Fiduciaries in General.
3A 17-1	Sale at private sale of real estate of persons under disability
3A 17-2	Power of certain fiduciaries to rent or lease realty, disposition of proceeds, exceptions
3A 17-3.	Power of disposition of undivided interest extended to entire fee after partition
	Article 2 Abandonment of Property by Fiduciary.
3A 17-4	Abandonment, by fiduciary, of property not worth protecting may be authorized
3A 17-5	Order approving abandonment of property by fiduciary and authorizing conveyance of title.
3A 17-6	Public liability after abandonment but before being divested of title

Section	Article 3 By Executor, Administrator C.T.A. or Substituted Administrator C.T.A.
3A 17-7	Surviving executor, power of sale and execution of trusts
3A 17-8	Conveyances by administrator cta where no executor named; validity
3A 17-9	Power of administrator cta to sell realty
3A 17-10	Court approval of sales by administrator cta or substituted administrator cta, security
3A 17-11	Responsibility of purchaser for application of proceeds of sale.
3A 17-12	Application for sale determined summarily pendente lite; grounds, proceeds of sale held pending final determination

Section

3A 17-13 Conclusiveness and effect of sale, exchange, or other disposition of property.

3A 17-14 Bond for proper distribution of consideration for sale, etc

Article 4. Sale of Trust Estate Producing Insufficient Income

3A 17-15 Sale of real estate yielding income disproportionate to value, order, effect

Article 5 Sale of Real Estate Involving Dower or Curtesy.

3A 17-16 Sale free from dower or curtesy, order of court, deed to purchaser

3A 17-17 Compensation to dower or curtesy holder by lump sum or investment

Article 1. BY FIDUCIARIES IN GENERAL

3A:17-1. Sale at private sale of real estate of persons under disability. When real estate is sold for the payment or satisfaction of mortgages authorized or directed by the superior court to be given upon real estate of infants, mental incompetents or other persons under disability, the officer or person authorized to make the sale may make the sale at private sale in his discretion and on such terms as he may deem to be most advantageous to the parties concerned therein, but no such sale at private sale shall be valid until confirmed by the superior court upon a report of the terms thereof by the officer or person making sale

Source R S 3 17-7, as am L 1949, c 237, p 745, §1

3A:17-2. Power of certain fiduciaries to rent or lease realty; disposition of proceeds; exceptions. An executor, administrator with the will annexed or substituted administrator with the will annexed and guardians and trustees shall, during the settlement of the estate of the deceased person or ward for whom such fiduciary was appointed, have power to rent and lease any real estate belonging to the estate or ward upon such terms and for such period of time as he shall deem wise and proper and all the products and income of such renting may be used by the fiduciary to pay taxes, interest and other charges against the said real estate, and for the care and upkeep of the same and the balance thereof after the payment of such charges shall be held by such fiduciary to be disposed of according to law, or the will of the deceased, as the case may be.

This section shall not apply to any real estate which has been specifically devised by a last will and testament, nor where any directions concerning such real estate by last will and testament are inconsistent with the power to lease and rent herein contained

Any lease or letting made under or by virtue of this section shall be made subject to the right of the fiduciary to sell such real estate under a power of sale conferred by any last will and testament or by order of any court of competent jurisdiction.

The provisions of this section shall not be

Section

3A 17-18 Title of purchaser of sale including dower or curtesy

Article 6 Resale of Real Estate Acquired by Mistake

3A 17-19 Resale of real estate mistakenly acquired by fiduciary

Article 7 Certain Sales Validated

3A 17-20 Certain appointments and sales validated

3A 17-21 Conveyances not executed and delivered by all of qualified executors, administrators, etc., validated

3A 17-22 to

3A 17-44 Blank

construed so as to deprive a surviving spouse of any right which he or she might have by virtue of any will or by way of dower, curtesy or otherwise, nor of the rents, issues, income or products thereof, to which such surviving spouse may be entitled by will, or by law, during the settlement of the estate

Source R S 3 17-8

3A:17-3. Power of disposition of undivided interest extended to entire fee after partition. Whenever heretofore or hereafter a fiduciary whether by deed or will shall have or shall have had a power of sale or disposal of an undivided interest or estate in lands and such lands shall be or shall have been partitioned pursuant to proceedings in any court of competent jurisdiction, resulting in the actual partition of said lands and the division thereof among the persons entitled thereto, in such case said fiduciary shall have the same power of sale or disposal as to the entire fee in said lands so set off or assigned to said fiduciary or to the person or persons seized of the title thereto with which the fiduciary's power of sale had been coupled, as the said fiduciary has or had with respect to the undivided interest in said lands prior to the partition proceedings

Source C 3 17-8 1, L 1939, c 164, p 514, §1

Article 2 ABANDONMENT OF PROPERTY BY FIDUCIARY

3A:17-4. Abandonment, by fiduciary, of property not worth protecting may be authorized. Whenever it shall be made to appear to the satisfaction of any court having jurisdiction of the accounts of any fiduciary on application by the fiduciary or other interested party, after such notice as the court may direct to be given to those interested in the estate or trust, that any real property, improved or unimproved, which constitutes or is comprised within the assets of the estate or trust, because of liens, encumbrances, absence or inadequacy of revenue or other causes or reasons, has such lack of value that it is not worth protecting, and that it is advisable and for the best interests of those interested in the estate or trust to do so, an order may be made permitting or directing the

fiduciary to abandon such real property, by such methods and in such manner as the court shall by order direct, and providing, if the court shall so direct, that the fiduciary shall continue to pay the cost of such fire and liability insurance as the fiduciary may be able to obtain and deem advisable and that the fiduciary shall continue to pay such other expense with respect to such real property as the fiduciary may deem advisable to protect the fiduciary and the estate or trust against any liability which might arise out of the continued ownership thereof, and that the fiduciary may, if any one can be found who will take title, convey such real property for a nominal consideration or no consideration so as to avoid any liability of the fiduciary or the estate or trust which might arise out of the continued ownership thereof

Source C 3 17-8 2, L 1943, c 88, p 305, §1

3A:17-5. Order approving abandonment of property by fiduciary and authorizing conveyance of title. Whenever it shall be made to appear to the satisfaction of any court having jurisdiction of the accounts of any fiduciary on accounting proceedings or on special application by the fiduciary or other interested party, after such notice as the court may direct, that the fiduciary has abandoned any real property, by refraining from paying real property taxes, assessments, water rents, mortgage principal or interest, or other liens or encumbrances, or by refraining from making repairs or improvements, or otherwise, after determination by the fiduciary in good faith and in the exercise of reasonable discretion that such real property because of liens, encumbrances, absence or inadequacy of revenue or other causes or reasons had such lack of value that it was not worth protecting, and that it was advisable and for the best interests of those interested in the estate or trust to abandon such real property, or that as the result of such abandonment, the fiduciary has been divested of title to or right to possession of such real property by foreclosure of mortgage or by the enforcement of any other lien or encumbrance, an order may be made on such terms and conditions as the court shall deem just, ratifying and approving the abandonment of such real property and if the fiduciary still has title to such real property, authorizing the fiduciary to convey all right, title and interest therein for a nominal consideration or no consideration in order to avoid liability which might arise by reason of the continued ownership thereof

Source R S 3 17-8 3, L 1943, c 88, p 307, §2

3A:17-6. Public liability after abandonment but before being divested of title. Whenever a fiduciary, trust or estate abandons any real property pursuant to this article, such fiduciary, trust or estate shall remain liable as heretofore for injury or damage to persons or property arising out of the ownership of such real property

notwithstanding such abandonment, until the fiduciary, trust or estate has divested itself or has been divested of title thereto

Source R S 3 17-8 4, L 1943, c 88, p 308, §3

Article 3 BY EXECUTOR, ADMINISTRATOR C T A OR SUBSTITUTED ADMINISTRATOR C T A

3A:17-7. Surviving executor; power of sale and execution of trusts. When real estate is given or devised by a will to the executors therein named, or any of them, to be sold, or is thereby ordered or directed to be sold by the executors therein named, or any of them, and 1 or more of such executors shall refuse or neglect to prove the will or shall have predeceased the testator, or having entered upon the duties of office, shall have died, resigned, or removed out of the state and refused to act, or shall have been discharged or removed from office by a court of competent jurisdiction, the trusts in the will shall vest in the other executor or executors named in the will who have proved the will, and in the survivor or survivors of them, unless it is otherwise expressed in the will; and such acting or surviving executor or executors may sell and convey the real estate of the testator, in the same manner, to all intents and purposes, as if all had been living or had acted and joined in the sale

Source R S 3 17-9

3A:17-8. Conveyances by administrator c. t. a. where no executor named; validity. When a will authorizes or directs real estate therein mentioned to be sold and fails to name an executor and letters of administration with the will annexed are granted thereon, a deed or conveyance of such real estate, made and delivered by the administrator or administrators with the will annexed or their survivor or survivors pursuant to a power or direction in the will, and whether or not there be a devise of such real estate by said will, shall be as valid and effectual as if made and delivered by any executor or executors who might have been named in such will

Source R S 3 17-10, as am L 1939, c 251, §1

3A:17-9. Power of administrator c. t. a. to sell realty. An administrator or administrators with the will annexed, and the survivors or survivor of them, shall have the same powers and authority with respect to the sale of real estate of the testator as were given to, or vested in, the executor or executors named in the will, whether or not such powers and authority constitute a naked power to sell real estate or a special continuing trust, and the discharge of the duties of such trust involves the exercise by the executor or executors of a discretion either in point of time or method, and whether or not there be a devise of said real estate to the executor or to any other person, in trust or otherwise, unless the will provides by express provision that in case of any contingency some person or persons other than the person or per-

sons named as executor or executors shall exercise such powers and authority

Source: R S 3 17-11, as am L 1939, c 251, §2

3A:17-10. Court approval of sales by administrator c. t. a. or substituted administrator c. t. a.; security. No sale of real estate made by an administrator or administrators with the will annexed, or his or their survivors in office, or by a substituted administrator or administrators with the will annexed, or his or their successors or survivors in office, shall be valid until the terms thereof have been submitted to, and approved by, the superior court or the county court of the county wherein the real estate lies

Upon an application for such approval the court shall require the fiduciary to give such additional security, by bond to the superior court, as the court may deem advisable, having regard to the value of the real estate in the will authorized or directed to be sold, for the proper distribution of the proceeds of sale

Source R S 3 17-14, as am L 1949, c 237, p 745, §2

3A:17-11. Responsibility of purchaser for application of proceeds of sale. When the sale of real estate is directed or authorized by the will and the real estate is sold by an administrator or administrators with the will annexed or substituted administrator or administrators with the will annexed, the purchaser shall not be required to look to the application of the purchase money, whether or not the proceeds of sale may be impressed by the will with a special trust

Source R S 3 17-15

Note of Reporter. A rule should be drafted to provide for verified petitions, summary procedure and time for the required notices

3A:17-12. Application for sale determined summarily pendente lite; grounds; proceeds of sale held pending final determination. Whenever an action shall be pending in any court of this state, having for its object the adjudication of the right, title, claim or other interest of any person or persons in the estate of a decedent, whose estate, in whole or in part, is being administered in this state, and it shall be represented to the court in which said estate is being administered, that real, personal, or other property of such decedent, or any part thereof, should be sold, exchanged or otherwise disposed of, pending the final determination of such action, the court may ascertain the merits of the application in such manner, and upon notice to all persons having an actual or asserted interest in the property, and whenever and as often as it shall satisfactorily appear to the court that such property, or any part thereof, is of such a character or so situated as to make it liable to depreciate in value or deteriorate, pending the determination of the action, or to make its care or preservation difficult or expensive, or that, for any other reason, the interest of all parties requires or will be benefited by a sale, exchange or other disposition of such property, or any part thereof, pending such action, the court may di-

rect the duly acting fiduciary of such decedent, whether or not he is vested with power of sale under the will, if any, of such decedent, to make sale, exchange or other disposition of such property, or any part thereof, in such manner, for such price, upon such terms, and with such restrictions as shall be deemed proper, and from and after such sale, exchange or other disposition, the proceeds thereof or the property received in exchange thereof, shall be held by such fiduciary pending the final determination of such action, in the place and stead of such property, and shall remain subject to the same claims and equities of the parties to such action and of the persons having an actual or asserted interest in the property as was the property, and if such proceeds shall result from the sale, exchange or other disposition of real estate, or any part thereof, such proceeds shall be considered as real estate for all purposes

Source L 1948, c 238, p 1073, §1

3A:17-13. Conclusiveness and effect of sale, exchange or other disposition of property. A sale, exchange or other disposition of such property, or any part thereof, when so made in conformity with the direction of the court, shall be valid, legal and effectual in law, and no purchaser or grantee shall be required to look to the application of the consideration therefor, whether or not the proceeds of sale may be impressed with a special trust by the will of such decedent

Source L 1948, c 238, p 1079, §2

3A:17-14. Bond for proper distribution of consideration for sale, etc. Upon the approval of such application, the court may require the fiduciary to give such security, by bond conditioned for the proper distribution of the consideration for such sale, exchange or other disposition, as the court may deem advisable, having regard to the amount of the proceeds of such sale.

Source L 1948, c 238, p 1079, §3

Article 4 SALE OF TRUST ESTATE PRODUCING INSUFFICIENT INCOME

3A:17-15. Sale of real estate yielding income disproportionate to value; order; effect. Real estate devised to executors or trustees, in trust for a person for life or until the happening of an event specified in the will, and occupied by 1 or more buildings that do not produce an income proportionate to the value of the land may be sold by the executors or trustees, or their survivor or survivors, under order and direction of the superior court if the court is satisfied that a sale would benefit the cestui que trust and remainderman and is not inconsistent with the intent of the will

The sale shall, to the extent set forth in the order, be free and clear of any interest of a person claiming under the will and the proceeds shall, after paying taxes and assessments and the costs and expenses of sale, be held by the executor or trustee in accordance with the provisions of the trust

Source R S 3 17-34

Article 5 SALE OF REAL ESTATE INVOLVING DOWER OR CURTESY.

3A:17-16. Sale free from dower or curtesy; order of court; deed to purchaser. In proceedings in any court for the sale of real estate by a fiduciary when a person is entitled to a right or estate of dower or curtesy in the premises, or any part or share thereof, the court may, having regard to the interests of all persons concerned, determine whether such right or estate shall be excepted from the sale of the premises or sold therewith, and enter its judgment or order accordingly.

If the sale of the premises including such right or estate is ordered, the estate and interest of every such person shall pass thereby, and the purchaser, his heirs and assigns shall hold the premises free and discharged from all claims by virtue thereof.

Source R S 3 17-35

3A:17-17. Compensation to dower or curtesy holder by lump sum or investment. When a right or estate of dower or curtesy is sold pursuant to section 3A 17-16 of this title, the court shall direct payment of such sum in gross out of the proceeds of the sale of the real estate to the person entitled to such right or estate, as shall be deemed a just and reasonable satisfaction therefor, and which the person so entitled shall consent in writing to accept in lieu thereof. If no such consent is given, the court shall ascertain and determine what proportion of the proceeds will be a just and reasonable sum to be invested for the benefit of the person entitled to such right or estate, and shall direct that such sum be put out at interest on sufficient security of real estate, invested in public stock or deposited in a safe and reliable savings institution, under direction and control of the court for the benefit of the parties entitled, and that the interest thereon to be paid to them as it becomes due as a compensation for, and in lieu of the right or estate of dower or curtesy, and that at the death of the person entitled to the interest the principal sum shall be paid to or distributed among the parties entitled thereto.

Source R S 3 17-37

3A:17-18. Title of purchaser of sale including dower or curtesy. If the sale of the real estate including the right or estate of dower or curtesy, is made pursuant to this article and approved by the court, such right or estate shall pass thereby and the purchaser, his heirs and assigns, shall hold the premises free and clear of all claims by virtue thereof.

Source R S 3 17-40

Article 6 RESALE OF REAL ESTATE ACQUIRED BY MISTAKE

3A:17-19. Resale of real estate mistakenly acquired by fiduciary prior to January 3, 1941; validation of prior sales and transfers. When,

under a mistake or misapprehension of his right or power so to do, a fiduciary has, prior to January 3, 1941, purchased, acquired and taken title to real estate as such fiduciary or as "estate of (name of deceased)", and such fiduciary was not permitted by law or by his trust to make the investment or acquire and take title to the real estate as such, the fiduciary may sell the real estate at public or private sale in his name as such fiduciary, or as fiduciary of the estate, or otherwise, and give a good and sufficient deed of conveyance therefor conveying a marketable title in fee simple in such real estate.

All sales and transfers of real estate heretofore made by a fiduciary who purchased, acquired or took title to real estate under the aforementioned circumstances, are hereby confirmed and made valid, legal and effectual in law. All deeds of conveyance therefor are hereby made good, valid, legal and effectual in law as of the date thereof as conveying a marketable title in fee simple in such real estate.

This section shall not be construed to release from liability to the estate such fiduciary by reason of such improper investment.

Source C 3 17-42, as am L 1941, c 68

Article 7 CERTAIN SALES VALIDATED

3A:17-20. Certain appointments and sales validated. L 1932, c 205, p 470, entitled "An act to validate the appointment of administrators cum testamento annexo, administrators de bonis non cum testamento annexo and substituted administrators cum testamento annexo, and sales and conveyances made by them", approved June 14, 1932, saved from repeal [This act validates certain appointments of administrators c t a, administrators d b n c t a, and substituted administrators and certain conveyances theretofore made or hereafter to be made.]

Source R S 3 17-44

3A:17-21. Conveyances not executed and delivered by all of qualified executors, administrators, etc., validated. Whenever any deed shall have heretofore been executed and delivered by 1 or more executors, administrators, administrators c t a, guardians or trustees though not executed and delivered by all of the duly qualified executors, administrators, administrators c t a, guardians or trustees and said deed shall have been delivered for a valuable and sufficient consideration, such deeds of conveyance are hereby confirmed and made valid, notwithstanding the said deed of conveyance was not executed and delivered by all of the duly qualified executors, administrators, administrators c t a, guardians or trustees, as required by law, provided, however, said deed of conveyance shall have been recorded for a period of 20 years, and provided, further, that nothing herein contained shall be construed to release, from liability to the estate, such executors, administrators, administrators

c t a, guardians or trustees, by reason of such improper conveyance.
Source R S 3 17-45

3A:17-22
to
3A:17-44. Blank.

Chapter 18. PROTECTION OF REAL ESTATE.

Section

3A 18-1 Protection of real estate, court order to sell personal property or to mortgage real estate

3A:18-1. Protection of real estate, court order to sell personal property or to mortgage real estate. Where real estate belonging to a minor or mental incompetent or held in trust for any beneficiary is likely to be sacrificed by a sale which could be avoided if funds were raised by the sale or other disposition of personal property belonging to or held in trust for him or by mortgaging such real estate, or by mortgaging, selling or otherwise disposing of other real estate belonging to or held in trust for him, or if with such funds the fiduciary could advantageously reduce or pay off a lien or charge encumbering the real estate or where such real estate can be in any way advantaged by the raising of funds in such manner, the superior court may direct the fiduciary to sell or otherwise dispose of so much personal property or borrow such sums on mortgage of the real estate belonging to the minor or mental incompetent or held upon trust for the beneficiary, or mortgage, sell or other-

wise dispose of other real estate belonging to or held in trust for him, as the court may deem advisable for such purposes and upon such terms and conditions as it may fix

Source R S 3 18-1, as am L 1949, c 222, p 704, §1

Note of Reporter When authorized by will or instrument creating trust, executor or trustee has no authority to mortgage, and where this power is given it is limited to specific purpose given

Andrews v Guayaquil & Q R Co, 1909, 75 N J Eq 535, 72 A 355, E & A

Mulford v Mulford, 1886, 42 N J Eq 68, 6 A 609
Clapp N J Pract §568 p 577

The guardian at common law was only a curator, did not take title, and so could not sell or mortgage. Statute governing appointment to duties of guardian of mental incompetent confirmed this, R S 3 7-41 " * * real estate shall in nowise be aliened except upon the authority of a statute * * * " See Clapp N J Pract §588

Because of this limited common law power, statutory authority for court order to sell personal property to pay debts is required. Compare sales for reinvestment which should be approved by court Clapp N J Pract §588 p 612

Chapter 19. IMPROVEMENTS ON REAL ESTATE.

Section

Article 1. Buildings, Machinery, Repairs, Additions, Replacements

3A 19-1 Application by fiduciary, directions of court

3A 19-2 Method of paying cost of repairs, etc

3A 19-3 Improvements already made by fiduciary, court approval

3A 19-4 Doweress or curtesy holder to share in proceeds of buildings

Article 2 Renewal of Property Destroyed by Fire or Other Casualty

3A 19-5 Application, order, approval of plans

Article 1 BUILDINGS, MACHINERY, REPAIRS, ADDITIONS, REPLACEMENTS

3A:19-1. Application by fiduciary; directions of court. When the superior court shall find that real estate held in trust for any beneficiary until the happening of an event named in the will or deed, or in trust for a person for life, or upon any other trust or real estate belonging to any minor or mental incompetent, is occupied in whole or in part by any building that is insecure, dilapidated or in need of repair or incapable of producing an income proportionate to the value of the land, or the real estate is in need of or would benefit by additions, repairs or improvements, and that it would be to the advantage of the minor, mental incompetent or beneficiary that additions, repairs or improve-

Section

3A 19-6 Method of defraying cost

3A 19-7 Apportionment of costs and income among joint interests

Article 3 Unimproved Real Estate

3A 19-8 Development of unimproved land for purpose of sale, application, order

3A 19-9 Blank

3A 19-10 Blank

ments should be made thereto or new buildings be erected, or both, the court may direct the guardian of the minor or incompetent or the trustee to enter into contracts therefor

The court also may authorize the replacement of machinery which is old or incapable of performing functions required of it or the purchase of new or additional machinery adapted to the purpose and use made, or to be made, of any building, erected or to be erected on such real estate

Source R S 3 19-1

3A:19-2. Method of paying cost of repairs, etc. To pay for the additions, repairs or improvements or the erection of new buildings or the new or additional machinery the superior court may order the fiduciary to borrow on the

security of any real estate or take from the corpus of the estate such sums as may be required and upon such terms as the court may approve

Source R S 3 19-2

3A:19-3. Improvements already made by fiduciary; court approval. When a fiduciary has made additions, repairs or improvements or erected new buildings or purchased new or additional machinery as contemplated in section 3A 19-1 of this title without first obtaining a court order authorizing him so to do, he may apply to the superior court for approval of his acts and for permission to pay the cost thereof from the corpus of the estate or the proceeds of a mortgage thereon or from other assets in his charge.

Source R S 3 19-3

3A:19-4. Doweress or curtesy holder to share in proceeds of buildings. If a person entitled to an estate of curtesy or dower joins in a mortgage made pursuant to sections 3A 19-2 or 3A 19-3 of this title he or she shall receive during life one-half, or such other portion according to the law in effect when the estate vested, of the net proceeds received from said building or other property, after deducting taxes, assessments, water rents, repairs, insurance premiums, commissions paid to agents for collecting rents, and other proper deductions to be first made from rents

Source R S 3 19-4

Article 2 RENEWAL OF PROPERTY DESTROYED BY FIRE OR OTHER CASUALTY

3A:19-5. Application; order; approval of plans. The superior court may direct a fiduciary to rebuild, repair or renovate or make additions to, or replace with new buildings and structures, any buildings or structures upon real estate belonging to the estate in the hands of the fiduciary which shall have been destroyed in part or in whole by fire or other casualty and to enter into contracts therefor

The desirability, suitability and cost of such improvements or additions or new buildings shall be subject to the discretion of the superior court and the improvements may be made according to the plans of the building or structure destroyed or according to other plans

Source R S 3 19-6

3A:19-6. Method of defraying cost. To pay the cost of improvements authorized by section 3A 19-5 of this title, the superior court may direct the fiduciary to borrow on the security of any real estate or take from the corpus of the estate such sums as may be required, but in any case, money in the hands of the fiduciary, representing the proceeds of insurance on the build-

ings or structures damaged or destroyed, shall first be applied to such cost

Source R S 3 19-7

3A:19-7. Apportionment of costs and income among joint interests. If the estate held by a fiduciary or by the ward of a fiduciary consists of a reversion or a remainder in fee therein or an estate for life or lives or other less estate therein, and the owner or the guardian of the owner of the reversion or remainder in fee therein joins with the owner or guardian of the owner of the estate for life or lives or other less estate therein in the application to the superior court for direction to improve such real estate as provided in sections 3A 19-5 and 3A 19-6 of this title, the court may direct the owner or the guardian of the owner of the reversion or remainder in fee therein to join with the owner or guardian of the owner of the estate for life or lives or other less estate therein in the making of the improvements or additions to, or the replacement with new buildings and structures of the building or structures on the real estate, and in such case the court shall have the same discretion as to the desirability, suitability and cost of such improvement as in other cases under sections 3A 19-5 and 3A 19-6

To compensate for deterioration of such improvements through use and wear, the court may order that such part of the income of the improved property as it may deem proper shall be devoted to the reduction of the encumbrances on the real estate, or be paid by the owner or the guardian of the owner, of the estate for life or other less estate, to the owner, or guardian of the owner, of the reversion or remainder, as the court may direct

"Owner" as used in this section includes any fiduciary holding real estate as such

Source R S 3 19-8

Article 3 UNIMPROVED REAL ESTATE

3A:19-8. Development of unimproved land for purposes of sale; application; order. When any fiduciary holds unimproved land or is vested with a power to sell the same, and the superior court shall find that the interest of the beneficiaries or ward requires the sale of the land and that a more advantageous sale may be made if it is developed and improved by laying out and building streets and making other improvements appropriate and incident to its division into building lots, the court may direct the fiduciary to develop and improve the land in such manner as it may approve and to pay the cost thereof out of any funds held by him upon a similar trust or for his ward, or to borrow funds upon security of the land or otherwise

Source R S 3 19-10

3A:19-9. Blank

3A:19-10. Blank

Chapter 20. EXCHANGE, PURCHASE OR SALE OF REAL ESTATE BY FIDUCIARIES.

Section	Article 1 Exchange or Purchase
3A 20-1	Exchange or purchase of real estate held by fiduciary
	Article 2 Sale of Real Estate Acquired in Judicial Proceeding or in Lieu Thereof
3A 20-2	Real estate purchased by fiduciary before or after foreclosure sale, etc., power to sell without court order

Article 1 EXCHANGE OR PURCHASE

3A:20-1. Exchange or purchase of real estate held by fiduciary. When it is made to appear to the court to which a fiduciary is accountable, that the estate under administration will be benefited by an exchange or purchase of real estate under the terms and conditions set forth and submitted in the application, the court may authorize or approve the exchange or purchase

Source R S 3 20-1, R S 3 20-2

Note of Reporter Proposed change clarifies limits of this provision. See Clapp N J Pract §596 p 625. The fact that a fiduciary has power to sell does not give him power to exchange property. *Tzeses v Green*, 1929, 105 N J Eq 12, 146 A 593, unless property received on exchange is proper trust investment. Clapp N J Pract §568 p 577. The general power of the court to permit an exchange of lands of a mental incompetent under R S 3 7-42 is inconsistent with R S 3 20-1 insofar as the latter section limits the exchange to adjoining parcels. See Clapp §596.

Article 2 SALE OF REAL ESTATE ACQUIRED IN JUDICIAL PROCEEDING OR IN LIEU THEREOF

3A:20-2. Real estate purchased by fiduciary before or after foreclosure sale, etc.; power to sell without court order. When, at a sale upon foreclosure of a mortgage forming part of the assets of the estate in his hands, a fiduciary shall purchase the real estate affected or when, to avoid foreclosure of such a mortgage asset, the fiduciary shall acquire title by deed from the owner of the real estate affected, or when, to protect such a mortgage asset, the fiduciary shall become a purchaser under any sale made upon foreclosure of any other mortgage, tax sale or other lien on the real estate, or at a sale of the real estate under execution upon any judgment or under any judicial proceeding, the real estate so purchased or acquired by the fiduciary shall be an asset of the estate in his hands and may be sold and conveyed by him without order or judgment of the court, and any such sale or conveyance made by him shall be valid and effective

Section	Disposition of proceeds, account
3A 20-3	

Article 3 Purchase by Fiduciary for Himself

3A 20-4	Fiduciary may purchase trust real estate, court approval required
3A 20-5	Blank

tual in all respects to sell or convey such real estate as if made under order of the court

Source R S 3 20-3

Note of Reporter The last paragraph of 3 20-3, covering title of co-fiduciaries to such realty, seems out of place here, and is covered in R S 3A 7-69 on survivorship. The above provisions do not require the devolution of all real estate in a fiduciary's hands as personalty. In re Koellhoffer's Estate, 20 N J Misc 139, 25A2 638.

3A:20-3. Disposition of proceeds; account.

The proceeds of a sale and conveyance of real estate pursuant to section 3A 20-2 of this title shall be accounted for and paid over by the fiduciary in the same manner as he would have been required to do with the proceeds of the mortgage or the trust funds used by him to acquire the real estate.

Source R S 3 20-4

Note of Reporter Covers procedure of payment, does not determine the payees. In re Koellhoffer's Est., 20 N J Misc 139, 25A2 638.

Article 3 PURCHASE BY FIDUCIARY FOR HIMSELF

3A:20-4. Fiduciary may purchase trust real estate; court approval required. When the superior court shall find that it will be to the advantage of an estate, trust or guardianship that the fiduciary thereof should purchase real estate held therein, it may permit him to purchase the same for such price and upon such terms as the court may approve.

Nothing contained in this section shall authorize the sale of any real estate where the fiduciary is not authorized to do so by the terms of the will or other instrument, or under the direction of the court or by a statute of this state, and nothing contained in this section shall authorize the purchase of any real estate by a fiduciary where there is a co-fiduciary, without the concurrence of such co-fiduciary.

Source R S 3 20-5

3A:20-5. Blank

Chapter 21. SUPPORT, MAINTENANCE AND EDUCATION OF WARD.

Section	Article 1 Principal and Income
3A 21-1	Fixing annual expenditure on minor, allowance in guardian's account
3A 21-2	Use of income of minor.
3A 21-3	Use of income of minor.

Section	Fixing expenditure on mental incompetent and his household
3A 21-4	
3A 21-5	Use of principal for support and education of minor or mental incompetent
3A 21-6	Use of principal of proceeds of sale of real estate for support of mental incompetent

Section

- 3A 21-7 Use of surplus income of mental incompetent to support family
- 3A 21-7.1 Purchase of land and erection of dwelling for mental incompetent and family

Article 2. Mortgage or Pledge of Estate

- 3A 21-8 Borrowing of money on security of estate of minor, mental incompetent or beneficiary of trust
- 3A 21-9 Report to court, approval and validity of security

Article 1 PRINCIPAL AND INCOME.

3A:21-1. Fixing annual expenditure on minor; allowance in guardian's account. The general guardian of the estate of a minor may, from time to time, apply to the court, wherein he is accountable, to fix the sum he may expend yearly for or toward the support, maintenance and education of his ward

The court may make such direction in the premises as to it shall seem proper under all the circumstances of the case, having special reference to the amount of the estate and the condition in life of the ward, and to the pecuniary means of any parent who is under legal obligation with reference to the support of the ward, but no judgment or order making such direction shall continue for more than a year

If during the pendency of such directions the ward is adequately supported, maintained and educated, the court shall allow the guardian in the settlement of his account the amount expended not exceeding the sum fixed by the court

Source R S 3 21-1

3A:21-2. Use of income of minor. The court wherein the guardian of the estate of a minor is accountable may from time to time authorize and direct the guardian to apply, out of the income of the estate, for the support, maintenance and education of the minor

Source R S 3 21-2

3A:21-3. Use of income of minor. When it shall be made to appear to the county court of the county in which the minor resides, or to the superior court, that

a The parent or other person having custody is unable to afford the minor proper education, maintenance and support, and

b The minor has or is entitled to a certain fund, estate or other property in the hands of a guardian or other person; and

c The best interests of the minor will be promoted by the use of income of such estate or property, or a portion thereof, for his education, maintenance and support—

The court may authorize and direct the guardian or other person in control of the fund, estate or other property to pay the income thereon, or so much thereof as the court shall direct, to the parents or persons having custody of the minor to be used for his education, maintenance and support.

Source R S 3 21-3.

Section

- 3A 21-10 Maintenance of mental incompetent, preservation of estate, payment of debts and advances

Article 3 Sale of Real Estate, Use of Personal Property or Timber Lands

- 3A 21-11 Order of court in case of minor
- 3A 21-12 Order of court in case of mental incompetent
- 3A 21-13 Conveyance by guardian, effect
- 3A 21-14 Blank

3A:21-4. Fixing expenditure on mental incompetent and his household. The superior court or the county court, to which the guardian, if a resident, is accountable, may direct the amount the guardian may expend yearly for the support and maintenance of the mental incompetent, his household, family, spouse, child or children, out of his personal estate, and the income thereof, and the profits of his real estate, or direct the payment of his debts or those of such family, or otherwise directing the guardian in relation to the care and management of the mental incompetent or his estate, and in relation to the support and maintenance of the mental incompetent, his household, family, spouse, child or children

Source R S 3 21-4, as am L 1938, c 133, p 285, §1

3A:21-5. Use of principal for support and education of minor or mental incompetent. When it shall be made to appear to the superior court or the county court to which the guardian is accountable that the income of the estate of a minor or mental incompetent is insufficient for his proper support, maintenance or education and he is unable to support himself and has no other proper means therefor, the court may, if it would be for the best interests of such minor or mental incompetent, authorize the guardian to use so much of the principal of the personal estate as it may deem to be for the best interest of the minor or mental incompetent

Source R S 3 21-5, as am L 1939, c 257, §1

3A:21-6. Use of principal of proceeds of sale of real estate for support of mental incompetent. When a sale of real estate has been made and it becomes necessary to use any of the proceeds thereof (including the interest thereon) for the support of the mental incompetent, the superior court or the county court to which the guardian is accountable may direct what portion of the proceeds and interest shall be used annually for such purpose.

Source R S 3 21-6

3A:21-7. Use of surplus income of mental incompetent to support family. When a mental incompetent is possessed of or entitled to real or personal estate, the yearly income of which is more than sufficient for the proper support and maintenance of the mental incompetent and his household, and the mental incompetent has 1 or more parents, brothers or sisters of the whole or half blood who are without adequate means

of support and dependent on the bounty of others, the superior court or the county court to which the incompetent's guardian is accountable may direct the guardian of such mental incompetent to pay over to the person or persons aforesaid such portion of the surplus income of the estate of the mental incompetent, not exceeding two-thirds of such surplus annual income, for their support, maintenance or education in such manner as the court may direct. The judgment or order making such direction shall not continue for more than 3 years.

Source R S 3 21-7

3A:21-7.1. Purchase of land and erection of dwelling for mental incompetent and family. When it shall be made to appear to the superior court or the county court to which the guardian is accountable that it would be advantageous to a mental incompetent and his or her spouse and children, or any of them, if a dwelling house and a lot of land were purchased or a lot of land were purchased and a dwelling house erected thereon, for the use of the mental incompetent and his family, or any of them, as aforesaid, the court may direct the guardian to purchase a house and lot or to purchase a lot and build a dwelling house thereon and to enter into such contracts therefor as the court shall deem advisable, and to pay for the same from any money or the proceeds of the sale of any personal property belonging to the estate of the mental incompetent.

Source R S 3 21-7.1

Article 2 MORTGAGE OR PLEDGE OF ESTATE

3A:21-8. Borrowing of money on security of estate of minor, mental incompetent or beneficiary of trust. When it shall be made to appear to the superior court that the personal estate and the rents, issues and profits of the real estate of a minor or mental incompetent is not sufficient for his proper support, maintenance and education or that of his wife or minor children, the court may direct the guardian of a minor or mental incompetent, or a fiduciary holding real estate under a will, deed or other instrument in trust for any such person, to borrow money upon security of the real estate in this state, or any part thereof or interest therein, belonging to the minor or mental incompetent.

Source R S 3 21-8

3A:21-9. Report to court; approval and validity of security. A bond and mortgage, or other security, given by a fiduciary mentioned in section 3A 21-8 of this title, if the court approve thereof, shall be valid and effectual in law, and, upon delivery, shall vest in the mortgagee or holder of any other security all the estate, title and interest of the minor or mental incompetent in and to the real estate, subject, however, to the provisos in the mortgage or other security contained.

Source R S 3 21-9

3A:21-10. Maintenance of mental incompetent; preservation of estate; payment of debts and advances. A guardian of a mental incompetent may, if the superior court approve of it, mortgage or pledge real or personal estate for the purpose of borrowing money to pay the debts of such mental incompetent, or discharging any encumbrance on his property, or for his maintenance, or for the preservation of his estate, or for the payment of any advances made by the guardian on account of any of the above-mentioned purposes when such advances have been made within 6 years of the commencement of the action to secure such approval.

Source R S 3 21-11

Article 3 SALE OF REAL ESTATE, USE OF PERSONAL PROPERTY OR TIMBER LANDS

3A:21-11. Order of court in case of minor. If the personal estate and the rents, issues and profits of the real estate of a minor be not sufficient for his support, maintenance and education, the superior court or the county court to which the guardian is accountable, upon full investigation of all the circumstances, may, from time to time, direct the guardian to sell so much of the timber growing or being upon the lands of the minor or such part of his real estate as it may deem adequate for such purpose.

Source R S 3 21-12

3A:21-12. Order of court in case of mental incompetent. If the income of the estate, real and personal, of a mental incompetent is insufficient to pay his just debts, to reimburse or pay any person for proper advances or services on his account, or to pay for his support, maintenance or education or that of his household, the superior court or the county court to which the guardian is accountable, upon full investigation of all the circumstances, may, from time to time, direct the guardian to sell so much of the timber, growing or being upon the lands of such mental incompetent, or to sell such parts of the real estate of such mental incompetent, or to use so much of any money or proceeds of sale received from the sale, already made, of any real estate or personal property of such mental incompetent, as the court, according to the best interest of the mental incompetent in view of the condition of the estate and the circumstances of the case, may direct.

Source R S 3 21-13

3A:21-13. Conveyance by guardian; effect. The conveyance of real estate sold pursuant to section 3A 21-11 or 3A 21-12 shall, when duly executed and delivered, vest in the purchaser as good and perfect estate in the subject of the sale as the minor or mental incompetent shall be seized of or entitled to at the time of making the judgment or order for sale.

Source R S 3 21-14.

3A:21-14. Blank.

Chapter 22. CONVEYANCES OF TRUST PROPERTY WHERE FIDUCIARY UNDER DISABILITY OR DECEASED.

Section

3A 22-1 When minor or mental incompetent is mortgagee or trustee, application for release, assignment, conveyance, etc., order authorizing or compelling

3A:22-1. When minor or mental incompetent is mortgagee or trustee; application for release, assignment, conveyance, etc., order authorizing or compelling. When a minor or mental incompetent holds a mortgage or other lien on real estate, or real estate in trust for others, in any manner, the superior court may authorize or compel the minor, his guardian or someone for him, or the guardian of the mental incompetent, to execute and deliver a release, satisfaction or assignment of the mortgage or other lien or a conveyance or assurance of the real estate to the person thereto entitled, in such manner as the court may determine

Source R S 3 22-1

3A:22-2. Validity of release, assignment, conveyance, etc. A release, satisfaction, assignment, conveyance or assurance authorized by the superior court pursuant to section 3A 22-1 of this title shall be valid and effectual as if executed by the minor or mental incompetent when of full age and mentally competent

Source R S 3 22-2

Section

3A 22-2 Validity of release, assignment, conveyance, etc

3A 22-3 Declaration of trust by decedent in lifetime, conveyance by fiduciary, application and order

3A:22-3. Declaration of trust by decedent in lifetime; conveyance by fiduciary; application and order. When a decedent shall, in his lifetime, have received a conveyance of real estate in trust for another and shall have, in his lifetime executed a declaration of trust for the same setting forth in effect that he has no beneficial interest therein and holds it for the use of or subject to the order of another in the declaration named, and the decedent shall die without making a conveyance of the real estate to the person thereto entitled, the superior court or the court to which the fiduciary is accountable may, upon application of the executor or administrator of the decedent, authorize such executor or administrator to convey the real estate pursuant to the stipulations contained in the declaration of trust

Source R S 3 22-3

Chapter 23. EXECUTION OF POWERS, CONSENTS AND CONTRACTS OF PERSONS UNDER DISABILITY OR DECEDENTS.

Section

3A 23-1 Exercising power or consent for mental incompetent, order, effect

3A 23-2 Contract of mental incompetent made while mentally competent, specific performance

3A 23-3 Contract of decedent for sale of land, order to perform

3A 23-4 Effect of conveyance

Section

3A 23-5 Contracts of decedent for purchase or sale of real estate, performance by executor or administrator

3A 23-6 Conveyance on consent of living children, trustee empowered in certain cases

3A 23-7 Blank

3A:23-1. Exercising power or consent for mental incompetent; order; effect. Where a power, discretionary or otherwise, is or shall be vested in or given to a mental incompetent or the exercise thereof is or shall be dependent upon his consent, the superior court may, if it appears expedient so to do, direct the guardian to exercise the power or execute the consent in such manner and form as the court may direct

A conveyance or other instrument made and executed by the guardian pursuant to an order herein authorized, shall be valid and effectual

Nothing herein contained shall be held to affect the provisions of a will duly executed and admitted to probate

Source R S 3 23-1

3A:23-2. Contract of mental incompetent made while mentally competent; specific performance.

The superior court may compel the specific performance of a bargain, contract or agreement made by a mental incompetent when he was mentally competent, and direct his guardian to perform all acts and execute all conveyances for that purpose

Source R S 3 23-2

3A:23-3. Contract of decedent for sale of land; order to perform. When a decedent has made an agreement for the sale or conveyance of real estate within this state, and the purchaser has paid therefor in full or in part and has been placed in possession thereof by the decedent, or when a decedent has made a contract in writing for such sale or conveyance, the superior court or the county court of the county wherein the real estate is situate may authorize the executor, administrator, administrator with the

will annexed, or administrator pendente lite of the decedent, or the purchaser, his personal representatives, and successors in interest or assigns, to fulfill the contract or agreement and to execute a good and sufficient conveyance to the purchaser or his successors and assigns

An action to secure such authority from the court must be commenced within 15 years from the date of the contract or making of the agreement, except where the contract or agreement is continuous or is of such nature that the completion or performance thereof is impossible within such period, in which case the court in its discretion may authorize the fulfillment of the contract or agreement after such period

Source R S 3 23-3, as am L 1949, c 284, p 876, §1

3A:23-4. Effect of conveyance. A deed made as authorized by section 3A 23-3 shall convey the real estate directed to be conveyed as fully as if the decedent had executed the same in his lifetime

Source R S 3 23-5, as am L 1949, c 284, p 877, §3

3A:23-5. Contracts of decedent for purchase or sale of real estate; performance by executor or administrator. Any executor of any last will and testament, or any administrator to whom letters testamentary or of administration have heretofore been or may hereafter be granted, may carry into effect the terms and conditions of any agreement for the purchase or sale of any real estate entered into by the decedent and any subsequent agreement entered into by such fiduciary in relation thereto shall be binding and effectual on all parties as if made by the decedent. Such fiduciary may take title to the real estate in said agreement named, at such times and upon such terms and conditions as he shall deem for the best interest of the estate, although by the provisions of said last will and testament there is given no power to the executor to receive and take title to real estate, or,

although said decedent died intestate. Said real estate shall be assets of the estate in the hands of said executor or administrator as the case may be, and may be sold and conveyed by him, without any order of court, and he shall receive, be accountable for and pay over the proceeds of such sale or sales as other estate moneys in his hands. Where any executor or administrator shall die or be removed from office by any court of competent jurisdiction, then and in every such case any sale or conveyance of such real estate made by the surviving or acting executor or administrator, or made by an administrator with the will annexed, or an administrator of intestate's estates, appointed by any court of competent jurisdiction in the place and stead of such deceased or removed executor or administrator, shall be construed to have vested and to vest in the purchaser or grantee the title to such real estate in the same manner and as fully to all intents and purposes as if all had been living or acting and had joined in such conveyance

Source R S 3 23-6

3A:23-6. Conveyance on consent of living children; trustee empowered in certain cases. When a testator by a will duly probated devises real estate situate in this state to a trustee, for any purpose, with full power to convey all or any part thereof upon the unanimous consent of all the children of the testator, and, after the death of the testator, 1 or more of the surviving children die, the trustee or his successor in office may exercise the power of sale and give valid and effectual conveyances of the real estate upon the unanimous consent of all the children surviving at the time of the exercise of the power

Source R S 3 23-7

3A:23-7. Blank

Chapter 24. TRANSFER OF PROPERTY OUT OF OR INTO STATE.

Section

- 3A 24-1 Removal of property from the state
- 3A 24-2 Meaning of term "personal property"
- 3A 24-3 Proof of authority of, and giving of security by, guardian or trustee

Section

- 3A 24-4 Cases where removal will be denied
- 3A 24-5 Effect of judgment for removal and transfer
- 3A 24-6 Blank
- 3A 24-7 Blank

3A:24-1. Removal of property from the state. When a guardian and his ward, whether mental incompetent or minor, or a trustee and his cestui que trust, or a trustee and all the cestui que trustent in esse, are both or all residents of another state, jurisdiction or foreign country, and the ward, cestui que trust or cestui que trustent is or are entitled to personal or real property in this state, the superior court or, except where there is a fund in the custody of the superior court or in the custody of a fiduciary or person whose letters or authority were received from the superior court, the county court

may, in an action brought by any interested person, authorize the guardian or trustee to receive and remove from this state all or any part of the personal property and the rents, issues and profits of the real property, or authorize the same to be transferred to the custody of the proper court of such state, jurisdiction or country

Source R S 3 24-1 and R S 3 24-2

3A:24-2. Meaning of term "personal property". The term "personal property" shall be taken in this chapter to include, but without limitation,

property or money or any legacy or distributive share or interest in the hands of a fiduciary residing or acting in this state, moneys in the hands of a receiver appointed by any court, moneys in the hands of a commissioner, officer, fiduciary or other person constituting the proceeds from the sale of real estate under any judicial proceeding, or in pursuance of the provisions of any will or instrument of trust, or awarded as damages for the taking of lands under legislative authority, moneys or funds deposited in any court of this state, whether arising from the sale of lands or otherwise, and moneys or property in the custody or under the control of any court

Source R S 3 24-1

3A:24-3. Proof of authority of, and giving of security by, guardian or trustee. Before judgment is entered in the action brought pursuant to section 3A 24-1, the court shall be satisfied by proof that the nonresident guardian or trustee is authorized and qualified to act in the state, jurisdiction or country to which the money or other property is to be removed. It shall require him to give bond, in double the amount or value of such moneys or other property to be removed, or in such other sum and with such oblige, conditions and sureties as the court may

determine, but no bond shall be required if it is satisfied that he has given security satisfactory to the court in such state, jurisdiction or country or is not required to furnish security under the laws thereof

Source R S 3 24-4

3A:24-4. Cases where removal will be denied. No removal or transfer of any property belonging to any cestui que trust or ward shall be made where it would conflict with the terms, limitations or conditions attending his right to the property, whether they are created by will, trust or any other instrument, or where the interests of a citizen of this state with respect to the property would thereby be prejudiced

Source R S 3 24-5

3A:24-5. Effect of judgment for removal and transfer. The delivery, transfer or payment of property or money pursuant to a judgment entered in accordance with this chapter shall be a legal discharge and acquittance for the same, but if it deems it advisable, the court may require receipts or releases or refunding bonds to be given and recorded

Source R S 3 24-6

3A:24-6. Blank

3A:24-7. Blank

Chapter 25. CREDITORS OF DECEDENTS; THEIR RIGHTS AND REMEDIES.

Section

Article 1 Definitions

3A 25-1 "Claim" defined

Article 2. Preferred Claims.

3A 25-2 Certain claims preferred

Article 3 Presentation and Bar of Claims

3A 25-3 Limitation of time to present claims of creditors, order, notice

3A 25-4 Blank

3A 25-5 Claims payable in future

3A 25-6 Blank

3A 25-7 Payment of claim not legally presented, effect, allowance in executor's account

3A 25-8 Rejected claims to be sued upon within 3 months

3A 25-9 Discharge of executor or administrator where notice is published

Article 4. Remedies of Creditors Who Fail to Present Their Claims Within the Time Limited

3A 25-10 Blank

3A 25-11 Against assets of a solvent estate, presentation of claim, acceptance or rejection

3A 25-12 Suit on rejected claim, proceedings, effect

3A 25-13 Failure to sue after notice to perfect claim, claim thereby debarred

3A 25-14 Blank

3A 25-15 Against legacies and distributive shares after settlement and before distribution

3A 25-16 Blank

3A 25-17 Action upon refunding bond of legatee or distributee

3A 25-18 Defense to action on fiduciary's bond in certain cases

3A 25-19 Action on refunding bond of ultimate distributee or legatee

Section

3A 25-20 Failure to file refunding bond, presumption that legacy or distributive share remains unpaid

Article 5 Liability of Real Estate for Debts, Methods of Enforcement.

3A 25-21 Real estate liable 1 year only for debts, exceptions

3A 25-22 Time not extended by general words in will

3A 25-22 1 No effect on certain rights of creditors

Article 6 Sale of Real Estate for Debts Where Personalty Insufficient.

A In General, County Court

3A 25-23

to

3A 25-25 Blank

3A 25-26 Examination into condition of estate, validity of certain claims determined

3A 25-27 Determination on validity of claims, effect

3A 25-28

to

3A 25-33 Blank

3A 25-34 Removal of executor or administrator refusing to furnish bond, substituted administrator to proceed with sale

3A 25-35 Blank

3A 25-36 Death of executor or administrator after sale but before deed executed, conveyance by substituted administrator

3A 25-37 Conveyance, recitals, estate passed by, effect of omission of recitals

3A 25-38 Effect of confirmation.

3A 25-39 Record of sale in more than 1 county

3A 25-40 Payment of debts out of proceeds of sale, distribution of surplus, contribution among heirs and devisees

Section

3A 25-41 Remedy of creditor of heir or devisee, petition for payment out of undistributed surplus

B In General, Superior Court

3A 25-41 1 Proceedings for sale in superior court

C Where Mortgagee or Judgment Lienor Files Claim

3A 25-42 Sale free and clear of mortgage or judgment lien, application of proceeds

3A 25-43 Payment of deficiency balance on mortgage or judgment out of other assets

D Bond by Heirs and Devisees to Prevent Sale

3A 25-44 Adjournment of proceedings upon bond being furnished

3A 25-45 Blank

3A 25-46 Prosecution of bond or sale of land on breach of conditions

3A 25-47 Judgment on bond to be in penal sum, disposition of amount collected

3A 25-48 to

3A 25-50 Blank

Article 7. Insolvent Estates

3A 25-51 Distribution among creditors to be pro rata, preferred debts excepted

3A 25-52 Blank

3A 25-53 Claims not presented in time barred, exception, extension of time

3A 25-54 to

3A 25-56 Blank

3A 25-57 Report of claims, account and inventory

3A 25-58 Report of claims, when presented, notice; filing report

3A 25-59 Exceptions to account, inventory and claims, determination, allowance, appeal

3A 25-60 Excepted claims may be proceeded upon by independent suit

Article 1. DEFINITIONS

3A:25-1. "Claim" defined. As used in this chapter, "claim" includes debt and demand

Source. R S 3 25-1

Article 2. PREFERRED CLAIMS

3A:25-2. Certain claims preferred. The following expenses and debts shall have preference and be paid out of the personal and real estate of the decedent, according to the following order

1 Funeral expenses

2 Administration expenses

3 Debts entitled to a preference under the laws of the United States

4 Hospital, physicians' and nurses' bills during the last illness

5 Judgments entered against the deceased according to the priority thereof respectively

Preference shall not be given to the payment of one item over other items of the same class except as stated in the fifth class

Source R S 3 25-2, as am L 1941, c 228, p 646, §1

Article 3. PRESENTATION AND BAR OF CLAIMS.

3A:25-3. Limitation of time to present claims of creditors: order; notice. At any time after granting letters testamentary or of administration, the superior court, county court or surrogate, as the case may be, may, whether the estate be solvent or not, order the executor or administrator to give public notice to creditors of the

Section

3A 25-61 Actions pending may proceed to judgment

3A 25-62 Judgment of insolvency, sale of lands

3A 25-63 Sale of lands in other counties

3A 25-64 Proceeds, distribution, attachment

3A 25-65 Residue, after debts to go to heirs

3A 25-66 Certain actions against executor or administrator saved

Article 7A. Sale of Real Estate Subject to Escheat, to Pay Debts

3A 25-66 1 Real estate which may be subject to escheat, sale to pay debts authorized, copies of petition and order to show cause mailed to state treasurer

3A 25-66 2 Affidavit of mailing, filing

3A 25-66 3 Accounting, surplus from sale payable to state treasurer

3A 25-66 4 Distribution by state treasurer, proof of descent proceeding required of claimants

3A 25-66 5 Payment of share to established claimant, state treasurer released as to subsequent claimants, recovery by claimant from distributee

Article 8 Liability of Heirs and Devisees

3A 25-67 "Heirs and devisees" defined

3A 25-68 Heirs and devisees liable for debt of decedent

3A 25-69 Joinder of parties

3A 25-70 General judgment to be entered

3A 25-71 Pleading and judgment in case of alienation of real estate

3A 25-72 Pleading and judgment where real estate descended or devised, execution, contribution.

3A 25-73 Contribution between heirs and devisees liable

decedent to present their claims within 6 months from the date of the order.

Source R S 3 25-3 Further see proposed amendment to Rule 3 98-1

3A:25-4. Blank.

3A:25-5. Claims payable in future. Liquidated claims, not due and payable, but payable in the future, may be presented for allowance, a reasonable rebate of interest being made when interest is not thereon accruing If such claim is disputed and action is brought thereon the plaintiff shall not fail in the action because the claim is payable in the future, if the claim is otherwise valid

Source R S 3 25-5

3A:25-6. Blank.

3A:25-7. Payment of claim not legally presented; effect; allowance in executor's account. If an executor or administrator in good faith pays a claim presented to him which is not verified as required, and, on or before final accounting, it is proved to the court or surrogate that the claim was owed by the decedent and was a just claim against the estate, the court shall allow the executor or administrator in his account the full amount of such claim if there be sufficient of said estate to pay the debts of equal degree with said claim in full, and if said estate is not sufficient for said purpose, he shall

be allowed the pro rata amount such creditor would have been entitled to receive if such claim had been presented verified as required
Source R S 3 25-7

3A:25-8. Rejected claims to be sued upon within 3 months. If an executor or administrator disputes a claim presented to him or portion thereof, he shall give notice in writing to the claimant, his agent or attorney, of that which he disputes

Within 3 months after receiving such notice the creditor shall commence an action to recover on the disputed claim, or portion thereof, otherwise a judgment made pursuant to section 3A 25-9 of this title shall bar the same with like effect as if it had not been presented within the time limited

Source R S 3 25-8

3A:25-9. Discharge of executor or administrator where notice is published. If a claim against a deceased person be not presented to the executor or administrator on or before the day fixed for presentation of claims in the notice to creditors published pursuant to section 3A 25-3, the executor or administrator shall not be chargeable for any assets or moneys that he may have paid in satisfaction of any lawful claims, or of any legacies, or any money distributed to the next of kin before such claim was presented

Source R S 3 25-9

Article 4 REMEDIES OF CREDITORS WHO FAIL TO PRESENT THEIR CLAIMS WITHIN THE TIME LIMITED

3A:25-10. Blank

3A:25-11. Against assets of a solvent estate; presentation of claim; acceptance or rejection. When an estate is solvent and the executor or administrator has settled his account showing assets in his hands, a claimant, who has neglected to present his claim within the time limited, may present such claim, in the form required to the executor or administrator at any time before the surplus shall have been distributed or paid over pursuant to law

Thereupon, the executor or administrator shall, if satisfied that the claim is correct and should be paid, pay the same or so much thereof as the amount of the assets in his hands will permit. If not satisfied of the correctness thereof, the executor or administrator shall notify the claimant, his agent or attorney, to proceed forthwith to establish the disputed claim, or part thereof, by judgment. In such case the executor or administrator shall retain from the assets available for distribution a sum sufficient to pay the amount of the claim, together with interest and costs, until such time as the claimant shall have had an opportunity to establish his claim by judgment.

Source R S 3 25-11

3A:25-12. Action on rejected claim; proceedings; effect. If an executor or administrator neglects or refuses to pay a claim presented pursuant to section 3A 25-11 of this title, the claimant may bring an action against such executor or administrator to recover on his claim in any court of competent jurisdiction, and the same proceedings may be had for collection and recovery thereon as if the claim had been presented within the time limited by section 3A 25-3 of this title

Source R S 3 25-12

3A:25-13. Failure to sue after notice to perfect claim; claim thereby barred. If a creditor neglects to commence an action upon his claim within 1 month after being notified to establish the same by judgment, as provided by section 3A 25-11 of this title, or neglects to prosecute diligently the action according to the rules of the supreme court, he shall be thereafter forever barred from any action to recover on the claim

Source R S 3 25-13

3A:25-14. Blank

3A:25-15. Against legacies and distributive shares after settlement and before distribution. A legacy or distributive share which has not been attached in the hands of the executor or administrator or paid to the person thereto entitled, shall be assets in the hands of the executor or administrator for the payment of a ratable proportion of a claim which a creditor failed to present within the time limited

In an action by a creditor to so charge such assets the creditor shall in no case recover costs, but he shall be liable therefor if judgment go against him

Source R S 3 25-15

3A:25-16. Blank.

3A:25-17. Action upon refunding bond of legatee or distributee. A claimant against an estate who has presented his claim in due form, but has failed to do so within the time limited, may bring an action in his own name without leave of court on a refunding bond given by a legatee or distributee and recover such proportion of his debt as ought to be paid out of the legacy or distributive share for which the bond was given

Recovery, in the whole, on a refunding bond shall in no case exceed the amount actually received by the legatee or distributee furnishing the same

Source R S 3 25-17

3A:25-18. Defense to action on fiduciary's bond in certain cases. A fiduciary, who has received a legacy or distributive share from an executor or administrator and has given a refunding bond therefor, may plead in absolute bar to an action on such bond, that, prior to commencement of the action, he had lawfully paid out

and distributed the legacy or share to the person entitled thereto, and has taken a refunding bond therefor from such person in the name of the executor or administrator from whom he as fiduciary received such legacy or share. If the fiduciary has paid out a part only of the legacy or share and has taken a similar refunding bond therefor, he may defend in like manner as to the part so paid or distributed.

If the fiduciary has failed to file such a refunding bond with the clerk of the superior court, the register of the prerogative court or the surrogate, as the case may be, prior to commencement of the action, he shall, upon filing the said answer in bar, file such a refunding bond in the proper office and shall pay the plaintiff costs which shall have accrued before the answer was filed.

Source R S 3 25-18

3A:25-19. Action on refunding bond of ultimate distributee or legatee. A creditor may sue on a bond taken by a fiduciary pursuant to section 3A:25-18 of this title, in the same manner and with like effect as if the original executor or administrator had made payment or distribution directly and himself taken such bond.

Source R S 3 25-19

3A:25-20. Failure to file refunding bond; presumption that legacy or distributive share remains unpaid. In an action by a creditor to charge a legacy or distributive share, as assets in the hands of an executor or administrator, for the payment of a ratable proportion of his debt, it shall be presumed that the legacy or share, if not attached, remains unpaid, if it appears that no refunding bond from the legatee or distributee was filed prior to commencement of the action.

Such presumption may be rebutted by proof that the legacy or share was actually paid over before the commencement of the action, but upon pleading the defense, the executor or administrator shall file in the proper office a proper refunding bond and shall pay plaintiff's costs which shall have accrued before answer filed.

Source R S 3 25-20

Article 5 LIABILITY OF REAL ESTATE FOR DEBTS, METHODS OF ENFORCEMENT

3A:25-21. Real estate liable 1 year, only for debts; exceptions. The real estate of any person who shall die seized thereof or entitled to the same, as well as any share or shares or part or parts of a share of propriety of undivided rights or warrants to locate lands in this state, shall be and remain liable for the payment of his debts for 1 year after his decease, and may be sold by virtue of an order of the superior court, if the letters were issued by that court, or, if the letters were issued by a surrogate, by order of the county court of the county where such real estate shall lie, or in case of any share or shares,

or part or parts of a share of propriety of undivided rights or warrants to locate lands, by an order of the county court of the county where such decedent last resided, if obtained within said period of time, any alienation or encumbrance made or attempted to be made by his heir or heirs, devisee or devisees to the contrary notwithstanding, provided, always, that nothing herein contained shall affect any right of dower or courtesy in said real estate, and provided further, that in all cases where an executor, executors, trustee or trustees shall, pursuant to a power of sale given in the will under which they were appointed and qualified, make a bona fide sale on submission to and approval of the superior court or the county court as the case may be as in the case of sales made by an administrator with the will annexed of any real estate of the decedent within said period of 1 year, then and in such case said real estate so sold shall be no longer liable for the payment of the debts of the decedent, and the purchaser shall not be liable to see to the application of proceeds of sale.

Source R S 3 25-21, as am L 1944, c 130, p 361, §1

3A:25-22. Time not extended by general words in will. The time fixed in section 3A 25-21 of this title shall not be deemed to be extended by any directions in a will that just debts be paid and shall only be extended beyond such period by express language in a will to the effect that such debts shall be and remain a lien upon said real estate for a longer term.

Source R S 3 25-22

3A:25-22.1. No effect on certain rights of creditors. Nothing contained in sections 3A 25-21 and 3A 25-22 of this title, shall affect any liability of heirs and devisees under sections 3A 25-67 to 3A 25-72 of this title.

Source R S 3 25-22 1

Article 6 SALE OF REAL ESTATE FOR DEBTS WHERE PERSONALTY INSUFFICIENT

A IN GENERAL, COUNTY COURT

3A:25-23

to

3A:25-25. Blank.

3A:25-26. Examination into condition of estate; validity of certain claims determined. The court shall, at the time and place mentioned in the order, or at such other time and place as it may appoint, hear and examine allegations and proofs of the executor or administrator and other persons interested, and may determine the validity of claims included in the schedule or statement of debts, to which the executor or administrator or any person interested in the real estate has objected in a writing.

Source R S 3 25-26

3A:25-27. Determination on validity of claims; effect. A determination on the validity of a claim

objected to and a judgment thereon pursuant to section 3A 25-26 of this title shall be conclusive in such proceeding for sale of real estate, but not otherwise, provided that if a claim be disallowed in such proceeding and a judgment be thereafter obtained thereon in any court of competent jurisdiction, the same shall thereafter be duly allowed and received

Source R S 3 25-27

3A:25-28

to

3A:25-33. Blank

3A:25-34. Removal of executor or administrator refusing to furnish bond; substituted administrator to proceed with sale. When real estate is ordered sold pursuant to the rules of the court, either on application of the executor or administrator or of a creditor, if the executor or administrator shall, for 30 days after the date of the order of confirmation, neglect or refuse to furnish bond with sureties as aforesaid, the court of the county in which the executor or administrator received his letters or appointment shall revoke the letters of the executor or administrator and appoint as substituted administrator, with or without the will annexed, as the case may be, such person having right thereto as will furnish bond in the manner and form aforesaid. The conveyance of the real estate shall be made by and in the name of the substituted administrator, who shall be empowered to proceed with the sale as if the rule to show cause and other prior proceedings had been had in his name

Source. R S 3 25-34

3A:25-35. Blank.

3A:25-36. Death of executor or administrator after sale but before deed executed; conveyance by substituted administrator. When a sole or sole surviving executor or administrator dies after the county court has confirmed a sale by him of real estate sold by its order to pay debts of his decedent but before he has delivered a deed to the purchaser thereof, the court shall on application of any person interested in the sale of the real estate, by order direct the substituted administrator, with or without the will annexed as the case may be, to execute a good and sufficient conveyance in law to such purchaser.

Before granting the order herein authorized the court shall require the substituted administrator to furnish a bond with sufficient sureties and in the same form and effect as the bond required to be given by the executor or administrator ordered to sell the real estate.

Source. R S 3 25-36

3A:25-37. Conveyance; recitals; estate passed by; effect of omission of recitals. A conveyance made by an executor or administrator of real estate sold under order of the county court shall set forth that the sale was so made by the

executor or administrator under order of the county court of the county wherein the sale was authorized, and shall state the date of the order and the date of the order of confirmation.

A conveyance in such form shall vest in the purchaser all the estate of which the testator or intestate was seized at the time of his death, if the order to show cause was obtained within a year after his death. If the order was obtained after the expiration of such time, the conveyance shall vest in the purchaser all the estate of which the heirs or devisees were seized at the time of the making of the orders

A conveyance made under order of court confirming the sale shall be good and valid and received in evidence as such in any court of this state, notwithstanding the omission of the recital in the deed of the orders of the county court authorizing and confirming the sale, and notwithstanding any variance between the recital in the deed of the orders and the record thereof

Source R S 3 25-37

3A:25-38. Effect of confirmation. When real estate is sold by order of the county court and the sale is confirmed by the county court of the county wherein the real estate is situate, the order confirming the sale or a certified copy thereof shall be conclusive evidence in all courts of the validity of the proceedings for sale and of the fulfillment of statutory requirements

The order of confirmation may be set aside or reversed by appropriate proceedings for that purpose, but no reversal shall affect a bona fide purchaser, and the purchaser, his heirs and assigns, after delivery of the deed, shall hold the real estate so purchased, notwithstanding such reversal and notwithstanding any defect in the proceedings for sale.

Source. R S 3 25-38

3A:25-39. Record of sale in more than 1 county. When real estate is sold in accordance with the rules of the court, the executor or administrator shall file and record a certified copy of the report of sale, and the order confirming such sale in the office of the surrogate of the county wherein he received his appointment, and he shall account for the proceeds of sale in the county court of that county

Source R S 3 25-39

3A:25-40. Payment of debts out of proceeds of sale; distribution of surplus; contribution among heirs and devisees. Money arising from a sale under the provisions of this article shall be received by the executor or administrator as assets for payment of debts. So much of the proceeds of sale as may not be required for the payment of debts and just expenses of every sort, the personal estate having been first applied thereto, shall be distributed among the heirs and devisees whose real estate is sold according to the law of descent or the will of the decedent, as the case may be. In either case, the order

for distribution shall be made by the court wherein the executor or administrator is required to account, after the executor or administrator has legally accounted for the sale

Persons entitled to such distribution may, in case of nonpayment, recover the same at law against the executor or administrator so accounting, saving to any person aggrieved his right of appeal.

The heirs or devisees whose real estate or interest therein is sold under this article may compel contribution in proportion to their interest from all others claiming or holding under the decedent, so as to equalize the burden or loss

Source R S 3 25-40

3A:25-41. Remedy of creditor of heir or devisee; petition for payment out of undistributed surplus. At any time prior to distribution of a surplus under section 3A 25-40 of this title, a judgment creditor of a person entitled by will or descent to share in the surplus, may, on petition to the court originally ordering sale in the cause, have an order directing payment of his judgment out of the proceeds of the sale of such share against which his judgment was or would have been a lien if the same had been owned in severalty by the judgment debtor and in the same order of priority as if sold under execution

Source R S 3 25-41

B IN GENERAL, SUPERIOR COURT

3A:25-41.1. Proceedings for sale in superior court. When an executor or administrator has received letters from the superior court, the applications for the sale of real estate to pay debts mentioned in the sections of this title and in accordance with the rules of the court shall be made to the superior court and thereupon such court shall have full and complete jurisdiction to proceed in the manner set forth in such sections and rules and to order the sale of real estate to pay debts, and all orders shall be made by it necessary in the premises, including orders directing sale, confirming report and directing conveyance; the effect of confirmation of a sale by the superior court shall be the same as prescribed by section 3A 25-38 of this title, and the effect of a conveyance shall be the same as prescribed by section 3A 25-37 of this title

Source. R S 3 25-41.1

C WHERE MORTGAGEE OR JUDGMENT LIENOR FILES CLAIM

3A:25-42. Sale free and clear of mortgage or judgment lien; application of proceeds. If a mortgagee or holder of a mortgage upon, or judgment creditor or holder of a judgment against the real estate of a decedent has filed a claim upon the debt secured by the mortgage or on the judgment, with the executor or administrator of the decedent, and it shall appear to the court to be necessary to sell the real estate

covered by the mortgage or encumbered by the lien of such judgment for the payment of the debts of the decedent, the court may order the same sold free and clear of the mortgage or lien, but the court shall at the same time order the proceeds of such sale to be first applied in payment of the mortgage debt or judgment debt, as the case may be. Any balance thereafter remaining shall be assets in the hands of the executor or administrator

Source R S 3 25-42

3A:25-43. Payment of deficiency balance on mortgage or judgment out of other assets. When proceeds of sale are insufficient to pay the mortgage or judgment debt in full, any balance remaining due shall be a claim against the other assets in the hands of the executor or administrator, and as to such balance, a mortgage holder shall be entitled to payment pro rata with claims of other creditors, and a judgment lien holder shall have such priority as he may be entitled to by law

Source R S 3 25-43

D BOND BY HEIRS AND DEVISEES TO PREVENT SALE

3A:25-44. Adjournment of proceedings upon bond being furnished. If, on order to show cause why real estate should not be sold to pay debts, the heirs and devisees of the decedent, or any of them, appear at the time fixed for the hearing and furnish bond to the executor or administrator, as provided in section 3A 25-45 of this title, the hearing and proceedings thereon shall stand adjourned until the amount necessary to pay the residue of the debts of the decedent and the just expenses and allowances for the settlement of the estate which shall remain after the personal estate shall be applied thereto, is ascertained

Source R S 3 25-44

3A:25-45. Blank

3A:25-46. Prosecution of bond or sale of land on breach of conditions. If the heir or devisee, on demand made of him or of the sureties on such bond shall refuse or neglect to pay to the executor or administrator the moneys required to pay the residue of the debts, expenses and allowances as aforesaid, the court shall order such bond to be prosecuted in any court of competent jurisdiction, or proceed to make such order for the sale of the real estate whereof the decedent died seized, as might have been if the bond had not been given

Source R S 3 25-46

3A:25-47. Judgment on bond to be in penal sum; disposition of amount collected. When judgment shall be recovered by plaintiff on prosecution of bond pursuant to section 3A 25-46 of this title, judgment shall be in the penal sum of the bond together with costs of suit; and upon execution issued, the sheriff or other officer

shall levy on property of the defendants to the amount of the judgment as in other cases

All money collected shall be paid to the court having jurisdiction of the accounts of the executor or administrator to be applied toward paying the residue of debts, expenses and allowances remaining after personal estate has been exhausted therefor, and to pay the costs and damages of the executor or administrator individually sustained

If thereafter a surplus remains, the same shall be repaid to the defendants from whom the judgment was collected

Source R S 3 25-47

3A:25-48

to

3A:25-50. Blank.

Article 7 INSOLVENT ESTATES

3A:25-51. Distribution among creditors to be pro rata; preferred debts excepted. If the real and personal estate of a testator or intestate is insufficient to pay his debts, both his real and personal estate shall be distributed among his creditors in proportion to the sum due to each, except that debts preferred by this title, and such reasonable allowance to the executor and administrator for care and expenses as the court may decree, shall be first paid.

Source R S 3 25-51

3A:25-52. Blank

3A:25-53. Claims not presented in time barred; exception; extension of time. Any creditor who shall not exhibit his claim to the executor or administrator within the time so limited and prescribed by rules of the court shall be forever barred from prosecuting or recovering his said demand unless the estate shall prove sufficient, after all debts exhibited and allowed are fully satisfied, or such creditors shall find some other estate not inventoried or accounted for by the executor or administrator before distribution, in which case such creditor shall receive his ratable proportion out of the same, provided, however, that the court, before distribution made, may, upon the application of any creditor of any insolvent decedent, extend the time within which claims may be presented by creditors of such decedent upon such terms as the court may deem just, and such notice of such application as the court may deem proper shall be given to the executor or administrator of such deceased insolvent

Source R S 3 25-53

3A:25-54

to

3A:25-56. Blank

3A:25-57. Report of claims; account and inventory. The executor or administrator shall report to the court such claims as may be duly

presented, particularly specifying the demand and amount thereof at the time of such report, and whether by judgment, bond, note, book account or otherwise

At such time the executor or administrator shall also exhibit under oath a true and just account of the personal estate of the decedent which has come to his knowledge or possession and an inventory of the real estate of the decedent whereof he has knowledge, and the value thereof, as near as may be

Source R S 3 25-57

3A:25-58. Report of claims; when presented; notice; filing report. The report required by section 3A 25-57 of this title may be made at such time as the court may fix

The executor or administrator shall give 2 months' notice of his intention to make the report by posting a notice, signed with his name, in 3 of the most public places in the county where the decedent resided at the time of his death or if a nonresident, in such county as the court may direct and the notice shall specify the day on which report will be made to such court

The report shall be filed in the office of the surrogate or clerk of the superior court, as the case may be, at least 20 days before the day so named or before the day to which it may be continued by the court

Source R S 3 25-58

3A:25-59. Exceptions to account, inventory and claims; determination; allowance; appeal. A creditor or other interested person may file exceptions to the account and exhibition of the executor or administrator, in respect of the amount and value of the real and personal estate of the decedent, and the executor or administrator or other interested person may file exceptions to any creditor's claim or part thereof. Such exceptions shall be filed on or before the day specified for presenting the report, or within such time as the court on application may allow and an account to which no exception is so filed shall be allowed as true and a claim not excepted to shall be deemed as justly due

The court shall hear proofs on the exceptions and shall make such determination and judgment with respect thereto as may be just and lawful

Either party may appeal from such judgment of a county court to the appellate division of the superior court within 45 days after the decree is rendered, but not after

Source R S 3 25-59

Note of Reporter This change is indicated by Rules 4 2-1(b) and 1 2-5(b)

3A:25-60. Excepted claims may be proceeded upon by independent suit. If a creditor to whose claim exception is made, elects to proceed by independent suit in preference to seeking a determination by the court on the exception filed to his claim, he shall so proceed immediately

Such sum as the creditor may thereon recover shall be the amount upon which his ratable proportion shall be paid

If an executor or administrator desires to have a claim determined by independent suit, he shall so notify the creditor before filing his report. The creditor shall, thereupon proceed to sue immediately, and such sum as may be recovered shall be the amount upon which a ratable proportion shall be paid

The court in which the action is brought shall determine the same as speedily as possible

Source R S 3 25-60

3A:25-61. Actions pending may proceed to judgment. If any action be pending against the executor or administrator, at the time of making the application mentioned in section 3A 25-52 of this title, or be brought against the executor or administrator after the making of such application, the plaintiff may proceed to final judgment therein, unless the claim be adjusted, but no execution shall in any case issue after the making of said application. The amount of the judgment, when recovered, shall be the sum on which the creditor shall receive his ratable proportion

Source. R S 3 25-61

3A:25-62. Judgment of insolvency; sale of lands. If upon the adjustment of claims of creditors and consideration of the amount of the real and personal estate and value thereof, it appears to the court that the real and personal estate is insufficient to pay the debts, or whenever it appears to the satisfaction of the court, upon consideration of the claims of creditors and the amount of the real and personal estate and the value thereof, that the real and personal estate is insufficient to pay the debts and that the estate is likely to be insolvent, the court shall enter judgment to this effect, and shall order and direct the executor or administrator to proceed as if the estate were insolvent, and to make sale of the whole or any part of the real estate of his decedent, from time to time, as may appear expedient, in the same manner as an executor or administrator who is directed to sell real estate under article 6 of this chapter (§3A 25-23 et seq) and under the rules of the court

Source R S 3 25-62

3A:25-63. Sale of lands in other counties. If the proceedings be in the county court, upon production of a duly certified copy of the judgment and order authorized in section 3A 25-62 of this title, real estate in other counties, or in several counties, may be sold in the manner provided in article 6 of this chapter (§3A 25-23 et seq) and under the rules of the court, and bond shall be given, the sale shall be reported and confirmed, a copy of the report and confirmation shall be filed and recorded in the court originally ordering sale, proceeds shall be accounted for

and proper conveyance shall be given in the manner and with the effect therein set forth

Source R S 3 25-63

3A:25-64. Proceeds; distribution; attachment. Proceeds of the real and personal estate which come to the hands of the executor or administrator shall be distributed under direction of the court, from time to time, as may be found convenient and just, which distribution shall be made in accordance with section 3A 25-51 of this title

Source R S 3 25-64

Note of Reporter Under Rule 3 80-2 procedure by attachment is superseded

3A:25-65. Residue after debts to go to heirs. If full payment of debts and claims is made, and there remains a residue, the residue shall be divided among the heirs of the intestate in such proportions as the real estate would have descended, or in case of a will, as the will directs

Source R S 3 25-65

3A:25-66. Certain actions against executor or administrator saved. Nothing contained in this article shall prevent a person from maintaining an action against the executor or administrator for, or in respect of, a waste or misapplication of the estate of his decedent

Source R S 3 25-66

Article 7 SALE OF REAL ESTATE SUBJECT TO ESCHEAT, TO PAY DEBTS

3A:25-66.1. Real estate which may be subject to escheat; sale to pay debts authorized; copies of petition and order to show cause mailed to state treasurer. Hereafter, in any case where real estate may be subject to escheat to the state, proceedings to sell such real estate to pay debts of the decedent may be taken as in other cases, and the court may order such sale to be made in the same manner and to the same extent provided by law for other cases, and the order of the court confirming such sale shall have the same force and effect as similar orders made in other cases, provided, that a copy of the order to show cause why such real estate should not be sold, together with a copy of the petition filed in such proceedings, shall be sent by registered mail to the state treasurer, and provided, further, that an affidavit of such mailing, together with a certificate signed by the attorney general and the state treasurer certifying that the state will interpose no objection to the making of an order authorizing the sale of such real estate, shall be exhibited to the court at the time set forth for the hearing in such order to show cause

Source R S 3 25-66.1, L 1946, c 283, p 964, §1

Note of Reporter See proposed new Rule 3 77-10

3A:25-66.2. Affidavit of mailing; filing. The affidavit of mailing of copy of such petition and of such order to show cause, and such certificate of the attorney general and the state treasurer

shall be filed, without cost, in the same manner as all other papers in such proceedings are required to be filed.

Source R S 3 25-66 2, L 1946, c 283, p 965, §2
Note of Reporter See proposed new Rule 3 77-10

3A:25-66.3. Accounting; surplus from sale payable to state treasurer. After accounting duly made by the legal representative in the court wherein he is required by law to account for such sale and after the payment of debts and just expenses, fees and commissions of every sort (the personal estate of the decedent having been first applied thereto), if no heirs at law of the decedent, to whom distribution may be made pursuant to the provisions of law, have made claim to any surplus remaining from such sale, the court shall order such surplus to be paid over to the state treasurer, and upon receiving the state treasurer's receipt therefor, the legal representative shall have no further obligation with respect to such surplus

Source R S 3 25-66 3, L 1946, c 283, p 965, §3

3A:25-66.4. Distribution by state treasurer; proof of descent proceeding required of claimants. After payment to the state treasurer, as aforesaid, no distribution of such surplus shall be made to any heir or other person interested in the real estate from the sale of which the surplus so paid over to the state treasurer arose, unless such heir or other person shall have proceeded pursuant to the provisions of chapter 4 of Title 3 of the Revised Statutes, except that the application presented to the county court, with the certificate of said court duly indorsed thereon, together with all proofs and proceedings, instead of being recorded as provided in section 3A-4-2 of the Revised Statutes, shall be filed with the state treasurer. Upon receipt of such papers, the state treasurer shall file the same in his office and shall distribute such surplus to the person or persons shown in such proofs to be interested in the real estate from the sale of which such surplus arose. Such distribution shall be made according to the interest or interests of such person or persons, as shown by such proofs, and payment shall be so made at any time each such person may appear and establish his identity to the satisfaction of the state treasurer

Source R S 3 25-66 4, L 1946, c 283, p 965, §4

3A:25-66.5. Payment of share to established claimant; state treasurer released as to subsequent claimants; recovery by claimant from distributee. Whenever the state treasurer shall make payment to any person or persons in accordance with the proofs filed with him in any case, as aforesaid, no recovery may be had against the state treasurer by any other person or persons who may thereafter establish in any court proceeding his or their contrary interest or interests in the real estate from the sale of which such surplus arose, but such other person or persons who may thereafter establish in any

court proceeding his or their interest contrary to such proofs shall, as to the portion of such surplus remaining in the state treasurer's hands, be entitled to his or their proportionate share thereof and, in addition thereto, may bring an action or actions at law against such persons to whom distribution has been made by the state treasurer, to recover his or their proportionate share of that portion of the surplus so distributed by the state treasurer

Source R S 3 25-66 5, L 1946, c 283, p 966, §5

Article 8 LIABILITY OF HEIRS AND DEVISEES

3A:25-67. "Heirs and devisees" defined. As used in this article, heirs and devisees shall include the heirs and devisees of a deceased debtor and the heirs and devisees of any of them, who shall have died before the commencement of the action, authorized by this article, to whom any of the real estate of which the debtor died seized descended or was devised

Source R S 3 25-67

3A:25-68. Heirs and devisees liable for debt of decedent. Every creditor whose claim against a decedent's estate has been either admitted by decedent's administrator or executor, or has been reduced to judgment against the decedent during his lifetime or against the decedent's administrator or executor after the decedent's death, whether said claim is based on contract, tort, or otherwise, shall have and may maintain by virtue of this article his action against the heirs of his deceased debtor dying intestate, seized of any real estate and against the heirs and devisees of any such debtor dying testate, so seized, and such heirs or devisees shall be liable to pay the debt by reason of the descent or devise of such real estate to them in the manner provided in this article and in all such actions creditors shall be preferred as in actions against executors and administrators

Source R S 3 25-68

Note of Reporter This section has been re-written to make clear that both contract and tort claims can be made the basis of relief under this section, as was true by judicial construction anyway

As to claims arising under contract it was necessary, in order to obtain the benefit of this statute, to have the administrator or executor admit the claim or reduce the claim to judgment. *Edwards v McClave*, 55 N J Eq 151, 156 (Vice Chancellor Emery 1896), affirmed on opinion below in 55 N J Eq 822 (E & A 1896)

As to tort claims, it was held in *Reilly v Deans*, 131 N J Eq 547, 548 (Vice Chancellor Lewis 1942) that the statute applies only to contractual claims, and not to tort claims

However, in *Houston v Levy's Executor*, 44 N J Eq 6 (Chancellor McGill 1888) it was held that where a tort claim against a decedent had been reduced to a judgment against the executor, a bill in equity could be maintained against the heirs and devisees to subject real estate descended to that payment

3A:25-69. Joinder of parties. Such action shall be brought against all of the heirs and devisees of the deceased debtor who can be found within the state

Source R S 3 25-69

3A:25-70. General judgment to be entered. If, in such an action, judgment is entered against any such heir or devisee such judgment against such heir or devisee shall be general for the full amount of the claim sued for with costs
Source R S 3 25-70

3A:25-71. Pleading and judgment in case of alienation of real estate. If real estate descended or devised to any heir or devisee has been bona fide aliened prior to the commencement of the action, it shall not be liable for such debt, and such heir or devisee may plead the alienation, admitting the descent or devise of the real estate and specifically describing it, in which case, if such fact be found in favor of such heir or devisee such creditor shall be entitled to recover such debt from the heir or devisee under this article, to the value of such real estate, which value shall be found by the jury, and a general judgment shall be entered against such heir or devisee for such debt to the value of the real estate so descended or devised, and aliened, as

so found, with costs, to which the real estate so aliened shall not be liable.

Source R S 3 25-71

3A:25-72. Pleading and judgment where real estate descended or devised; execution; contribution. If an heir or devisee in such an action shall, in his answer, admit the descent or devise of the real estate to him, specifically describing the same, the creditor shall be entitled to recover such debt, under this article, out of the real estate so descended or devised, and the judgment shall be special against such heir or devisee to be made out of the real estate so descended or devised alone and execution shall issue accordingly

Source R S 3 25-72

3A:25-73. Contribution between heirs and devisees liable. Contribution between heirs and devisees liable under this article may be had as heretofore.

Source R S 3 25-73

Chapter 26. DEVISES, LEGACIES AND DISTRIBUTIVE SHARES.

Section		Section	
	Article 1 Distribution Under Will		
3A 26-1	Blank See proposed additional legislation	3A 26-25	Action for legacy
3A 26-2	Blank See proposed additional legislation	3A 26-26	Conditions precedent to suit for legacy
3A 26-3	Distribution by conversion of real estate in certain cases, procedure	3A 26-27	Extent of recovery
		3A 26-28	Plea of want of assets, procedure
		3A 26-29	Costs
	Article 2 Distribution of Intestate Estate		C For Legacies and Distributive Shares, in County Court
3A 26-4	Property distributable, judgment therefor	3A 26-30	Jurisdiction of actions for legacies and distributive shares
3A 26-5	Distribution, when made	3A 26-31	Action for legacy or distributive share, proceeding
3A 26-6	Unknown distributees, order for filing claims of	3A 26-32	Powers and duties of surrogate
3A 26-7	Publication of notice of order		Article 6 Contingent Legacies Charged on Real Estate
3A 26-8	Inquiry for unknown distributees, proof, notice by mail		A Partition to Satisfy Legacy
3A 26-9	Failure to file claim debars unknown distributee	3A 26-33	Apportionment of certain real estate to pay legacy, procedure
3A 26-10	Distribution of investments in kind when minors or mental incompetents are involved, judgment for, effect	3A 26-34	Effect of apportionment
	Article 3 Distribution of Legacies, Distributive Shares, Trusts, etc		B Deposit of Money to Satisfy Legacy
	A Unclaimed Assets	3A 26-35	Court to accept deposit; when, effect
3A 26-11	Payment into court, receipts, record	3A 26-36	Application for deposit
3A 26-12	Affidavit required	3A 26-37	Money, how deposited, disposition of interest
3A 26-13	Deposit in bank, withdrawal		Article 7 Return of Legacy
3A 26-14	Proceedings by claimant, order for payment	3A 26-38	Return of legacy pro rata
3A 26-15	Letters of trusteeship required before transfer to trust		Article 8 Nonresident and Unknown Distributees, Depositions
	B Payment into Court for Benefit of Legatee, Distributee, etc	3A 26-39	Depositions of nonresident or unknown claimants to estate
3A 26-16	Deposit in court of money or other property of legatee, next of kin or beneficiary of trust in certain cases	3A 26-40	Notice of settlement of account where testimony taken
	C Proceeds of Real Estate Sold for Payment of Debts and Invested for Surviving Spouse	3A 26-41	Publication of notice
3A 26-17	Distribution, when and how made	3A 26-42	Time for filing claims, extensions of time for performance of act or giving of notice
	Article 4 Bonds of Legatees and Distributees		Article 9 Apportionment of Federal and New Jersey Estate Taxes
	A Refunding Bonds	3A 26-43	Apportionment of federal and New Jersey estate taxes, definitions
3A 26-18	Refunding bond of legatee or distributee, executor or administrator to take	3A 26-44	Apportionment of tax among fiduciary and transferees interested in gross tax estate
3A 26-19	Amount and form of bond	3A 26-45	Apportionment of tax where temporary interest is created
	B Bonds to Secure Remaindermen	3A 26-46	Apportionment of tax to transferees in absence of directions to contrary
3A 26-20	Bond required of holders of determinable interests, in general	3A 26-47	Limitation on direction for apportionment or nonapportionment of tax
3A 26-21	Bond when remainderman is lineal descendant of holder of determinable estate	3A 26-48	Recovery by fiduciary from transferees or others in possession of property included in tax
3A 26-22	Bond when executor is holder of determinable estate	3A 26-49	Transfer or distribution of property, duties and liabilities of fiduciary
	Article 5 Actions for Legacies and Distributive Shares.	3A 26-50	Jurisdiction of superior court or county court
	A General Provisions	3A 26-51	Effective date estates affected
3A 26-23	Actions for distributive shares		
	B For Legacies, in Superior Court		
3A 26-24	Limitations on enforcement of legacy		

Article 1 DISTRIBUTION UNDER WILL

3A:26-1. Blank See proposed additional legislation

3A:26-2. Blank See proposed additional legislation

3A:26-3 Distribution by conversion of real estate in certain cases; procedure. When a will directs that all the estate whereof the testator died seized or possessed be distributed to several persons, but no power to sell and convey real estate is expressly given therein to the executor, the executor or administrator with the will annexed may, if it is deemed necessary to convert real estate into money in order to comply with the will, apply in a summary manner to the superior court setting forth the facts and circumstances making sale of real estate necessary. The court may, by rule or otherwise, require such notice of such application to be given to any person by service, mail or publication as it may deem proper in the circumstances.

Thereupon the court may, if satisfied that the necessity exists, authorize and empower by its judgment the executor or administrator with the will annexed to make either a public or private sale of the real estate and a conveyance therefor, under such terms and conditions as the court may deem proper.

A sale or conveyance made pursuant to such order shall be as good and effectual as if power to make the same had been expressly conferred on the executor by the will.

Source R S 3 26-5

Article 2 DISTRIBUTION OF INTESTATE ESTATE

3A:26-4. Property distributable; judgment therefor. After executors or administrators legally account for personal property of the decedent, the county court of the proper county, or other court having jurisdiction, shall, by a judgment of distribution, direct a just and equal distribution of the personal property, whereof the decedent died intestate, which remains after payment of debts, funeral charges and other just expenses in the manner and portions set forth in chapter 5 of this title (§3A 5-1 et seq.)

Anyone aggrieved by a decree of distribution of an orphans' court may appeal to the prerogative court.

Source R S 3 26-6

3A:26-5. Distribution; when made. Distribution of the personal property of an intestate shall not be made until 1 year after granting of administration unless an order barring creditors is entered, in which case distribution may be made after 20 days from such order.

Source R S 3 26-7

3A:26-6. Unknown distributees; order for filing claims of. When it appears on application

for an order of distribution that, in addition to persons known to have an interest in the estate, any other person or persons whose names or residences are unknown may be entitled to participate in the distribution, the court may make an order requiring all such persons whose names or addresses are unknown and who may have an interest in such matter to file an appearance within 30 days after the making of such order or to file their claims within such time with the administrator.

Source. R S 3 26-8.

3A:26-7. Publication of notice of order. Notice of an order pursuant to section 3A 26-6 of this title shall be published for 5 consecutive days in such newspaper as may be directed by the court, the last publication thereof to appear at least 20 days before the last day for filing such claims.

Source. R S 3 26-9.

3A:26-8. Inquiry for unknown distributees; proof; notice by mail. The court making an order, pursuant to section 3A 26-6 of this title, shall require the administrator, or his attorney or agent actually intrusted with the management and conduct of the passing of his account, diligently and carefully to inquire for the names and places of residence of all persons who may be entitled to participate in the distribution, and to file proof of such inquiry and of the information thereby obtained.

The court may also require that a copy of the published notice be mailed to the last known post-office address of any person whose present address is unknown, such notice to be inclosed in a wrapper with postage prepaid thereon.

Source R S 3 26-10

3A:26-9. Failure to file claim debars unknown distributee. A person who fails to appear or file his claim within the time prescribed by an order pursuant to section 3A 26-6 of this title, shall be forever thereafter debarred from all right, title or claim to the decedent's estate.

Thereupon, the court shall proceed to make judgment of distribution upon proofs of the claimants to the estate, or upon such other proof as the court may require. A judgment of distribution made pursuant to this section shall be in conformity with the statute as it existed at the time of the death of the decedent.

Source R S 3 26-11

3A:26-10. Distribution of investments in kind when minors or mental incompetents are involved; judgment for; effect. When it appears, upon settlement and allowance of the final or intermediate accounts of an administrator that the balance available for distribution is composed in whole or in part of bonds, mortgages,

stock shares, loans on personal security or other security which came to him as investments of his intestate, and a minor or mental incompetent is entitled to the balance, or to share therein, the administrator may, by complaint, apply to the court wherein he was appointed or where he is accountable, for directions as to the disposition of investments, whether they shall be sold and converted or distributed in kind to the minor or mental incompetent through his guardian and to other persons entitled, and the guardian, if any there be, may join in the complaint and ask direction as to the acceptance thereof

Thereupon, the court may, according to the circumstances of the case and the evidence produced, make a judgment directing sale or conversion of the securities or directing their distribution in kind or authorizing the guardian to accept such portion thereof as would be equal in money to the amount of his ward's distributive share of the whole balance.

An administrator distributing in kind or a guardian accepting distribution in kind pursuant to a judgment hereunder, shall be, as fully exonerated and acquitted as if the balance had been distributed in money and the same were invested according to law and a guardian shall not be accountable for any loss by reason of accepting such distribution

Source R S 3 26-12

Article 3 DISTRIBUTION OF LEGACIES, DISTRIBUTIVE SHARES, TRUSTS, ETC.

A UNCLAIMED ASSETS

3A:26-11. Payment into court; receipts; record. When a fiduciary states his final account and there remains in his hands a balance, legacy, residuary share, dividend sum or sum of money to be paid to a person and the person, or his guardian, if he be an infant or under disability, fails to claim the same within 3 months from the time the account is passed, the fiduciary may, upon filing the affidavit required by section 3A 26-12 of this title, pay the same into the court wherein the account was rendered, taking therefor the receipt of the clerk or surrogate

Such receipt shall be a full and sufficient discharge and release to the fiduciary for moneys so by him paid into court and against the claimant thereto entitled and the same may be recorded in the office of the clerk or surrogate in the same manner in which releases for legacies and distributive shares may be recorded

Source R S 3 26-13

3A:26-12. Affidavit required. Upon payment of moneys into court pursuant to section 3A 26-11 of this title, the fiduciary shall file therewith an affidavit that he has made diligent inquiry for the residence and post-office address of the person entitled to the moneys and has not been able

to ascertain the same; or that, having ascertained such residence and post-office address, he has personally, or by letter duly mailed to such residence and post-office address, notified the person entitled to the moneys to appear and receive the same, which notice shall have been given at least 20 days before payment of such moneys into court

Source R S 3 26-14

3A:26-13. Deposit in bank; withdrawal. The clerk or surrogate, to whom moneys are paid pursuant to section 3A 26-11 of this title, shall deposit or invest the same as required by rule of court

Source R S 3 26-15

3A:26-14. Proceedings by claimant; order for payment. A person entitled to moneys deposited pursuant to section 3A 26-11 of this title may obtain the same by application to the court wherein the money is deposited setting forth the claimant's right and title thereto Thereupon the court may make such order for the payment of the money, or any portion thereof, and accrued interest as it may deem proper.

Source R S 3 26-16

3A:26-15. Letters of trusteeship required before transfer to trust. It shall be unlawful for any fiduciary to transfer, pay over or distribute any legacy, distributive share or part of the estate or trust in the possession or under the control of such fiduciary to a testamentary trustee or substituted testamentary trustee until letters of trusteeship shall have been issued to such testamentary trustee or substituted testamentary trustee

Source L 1941, c 171, p 545, §1

B PAYMENT INTO COURT FOR BENEFIT OF LEGATEE, DISTRIBUTE, ETC

3A:26-16. Deposit in court of money or other property of legatee, next of kin or beneficiary of trust in certain cases. Where it shall appear that a legatee, next of kin or beneficiary of a trust would not have the benefit or use or control of the money or other property due him, or where other special circumstances make it appear desirable that such payment should be withheld, the court by which the fiduciary was appointed, or, in the case of a trust where the trustee was appointed other than by a court, the superior court, on motion of any party, or, failing such, on motion of the attorney general, or on the court's own motion, may direct that such money or other property be paid into such court for the benefit of such legatee, next of kin, beneficiary of a trust, or such person or persons who may thereafter appear to be entitled thereto Such money or other property so paid into court shall be paid out only by the special order of the court

Source L 1940, c 148, p 315, §1

C PROCEEDS OF REAL ESTATE SOLD FOR PAYMENT OF DEBTS AND INVESTED FOR SURVIVING SPOUSE

3A:26-17. Distribution; when and how made. When a portion of the proceeds of real estate sold by judgment of the superior or county court to satisfy debts of a decedent has or shall have been invested for the benefit of the surviving spouse during his or her lifetime, the superior court or the county court of the county wherein the real estate so sold is situate, as the case may be, shall, upon the death of the life beneficiary, order the portion so invested to be distributed to the heirs or devisees of the person whose real estate was so sold in accordance with the law of descent or the will of the testator, as the case may be, unless the amount realized from the sale of said real estate remaining after the investment of said portion for the benefit of the surviving spouse was insufficient to pay the debts of the decedent as proved and allowed in the proceedings in which said order to sell was made and, in such case, the court shall direct the payment of the balance of such debts out of said principal sum so invested, so far as it shall be adequate for that purpose, in pro rata shares according to the amount of such debts so proved and allowed and shall direct distribution of any balance of said principal sum, remaining after the payment of said debts and interest, among the said heirs and devisees as aforesaid, provided, however, that if any creditor, his personal representative or successor in interest, neglects for 6 years after the death of such surviving spouse to claim any balance upon his claim so proved and allowed as aforesaid, the share of said principal sum which would have been paid to such creditor hereunder, shall be distributed, by order of the court, among the said heirs and devisees as aforesaid

Source R S 3 26-17

Article 4 BONDS OF LEGATEES AND DISTRIBUTEES

A REFUNDING BONDS

3A:26-18. Refunding bond of legatee or distributee; executor or administrator to take. An executor or administrator shall, on paying a legacy or distributive share to the person entitled, take a refunding bond therefor, to be filed in the office of the surrogate of the county wherein he received his letters or in the office of the clerk of the superior court, if he received his letters from the ordinary or the superior court

Source R S 3 26-19

3A:26-19. Amount and form of bond. The bond required under section 3A 26-18 or section 3A 26-26 of this title shall be in the amount or value of the legacy or allotted distributive share and shall be sufficient, if signed by the legatee or distributee, or his guardian, as the case may be, without any sureties whatever

The bond of a legatee shall be conditioned sub-

stantially as follows That if any part or the whole of such legacy shall at any time thereafter appear to be wanting to discharge any debt or debts, legacy or legacies, which the said executor or administrator may not have other assets to pay, he, the said legatee, will return his said legacy or such part thereof as may be necessary for the payment of the said debts, or for the payment of a proportional part of the said legacies

The bond of a distributee shall be conditioned substantially as follows That if any debt or debts, truly owing by the intestate, shall be afterwards sued for and recovered or otherwise duly made to appear, and which there shall be no other assets to pay, he shall refund and pay back to the administrator his ratable part of such debt or debts, out of the part and share so allotted to him

Source R S 3 26-20, as am L 1949, c 83, p 390, §1

B BONDS TO SECURE REMAINDERMEN

3A:26-20. Bond required of holders of determinable interests; in general. An executor or administrator with the will annexed shall not be compelled to pay or deliver personal property bequeathed for life, for a term of years or for any other limited period, or upon a condition or any contingency, to the holder of such determinable interest, until there is given to the court, security in such sum and form as the court may deem sufficient to secure the remainder interest, whenever the same shall accrue or vest in possession

Source R S 3 26-21

3A:26-21. Bond when remainderman is lineal descendant of holder of determinable estate. Where the person next immediately in remainder is a lineal descendant of the holder of the determinable interest as set forth in section 3A 26-22 of this title, and the executor or administrator with the will annexed has not filed any security, the holder of the determinable interest shall not be required to give security in excess of \$50,000

Source R S 3 26-22

3A:26-22. Bond when executor is holder of determinable estate. When the executor or administrator with the will annexed is the holder of a determinable interest enumerated in section 3A 26-20 of this title, he shall, before receiving such personal property into his possession, file a bond to the superior court with the clerk of the prerogative court or the surrogate of the proper county, as the case may be, unless the will provides that no security shall be required of him

Such bond shall be in the amount of money or the value of the property to be received, with 2 sufficient sureties to be approved by the court, conditioned for the faithful conservation of the property

Until such bond is filed, the executor or administrator may not receive the moneys or

property, but the court may, upon complaint presented by an interested person, and on 10 days' notice in writing to the executor or administrator, appoint some other proper person to receive and administer the same as trustee, upon giving such security for the faithful discharge of his duties as the court may deem proper

Source R S 3 26-23

Article 5 ACTIONS FOR LEGACIES AND DISTRIBUTIVE SHARES

A GENERAL PROVISIONS

3A:26-23. Actions for distributive shares. If an executor or administrator fails to pay a distributive share to a person thereto entitled under a judgment made pursuant to section 3A 26-4 of this title, such person may recover the same in an action at law from the executor or administrator.

Source R S 3 26-24

B FOR LEGACIES, IN SUPERIOR COURT

3A:26-24. Limitations on enforcement of legacy. Nothing in sections 3A 26-25 to 3A 26-29 of this title contained shall be so construed as to permit the enforcement of a legacy to the prejudice of creditors of the testator or as giving effect to a last will not warranted by law

Source R S 3 26-25

3A:26-25. Action for legacy. A legatee of personal property under a will may bring an action therefor in the superior court

Source R S 3 26-26

3A:26-26. Conditions precedent to suit for legacy. No such action to recover a legacy may be maintained until

a The legacy becomes due and payable,

b Reasonable demand for payment is made upon the executor or administrator, and

c A refunding bond in substantially the form prescribed in section 3A 26-19 of this title is tendered to the executor or administrator by the legatee, or his guardian if the legatee is an infant under the age of 21 years or a mental incompetent, and, if he refuse to accept the same, is filed in the court wherein such action is to be brought, prior to suing out process

Source R S 3 26-27

3A:26-27. Extent of recovery. If it appears in such an action that the surplus of assets in the hands of the executor or administrator with the will annexed over debts of the testator, is sufficient to pay all legacies bequeathed, the full amount of the legacy may be recovered with costs, but if the surplus is not sufficient therefor, an abatement shall be made in proportion to the legacies so given

Source R S 3 26-28

3A:26-28. Plea of want of assets; procedure. Upon want of assets to pay debts and legacies being pleaded in such an action, the court shall appoint auditors to examine the account of the executor or administrator After hearing, upon

notice to parties to the action or their attorneys, the auditor shall report how the accounts of the executor or administrator stand, the amount of assets that will remain after payment of debts and what part of such surplus should be used toward paying plaintiff's legacy Upon exception the court may amend or correct any error or mistake appearing in the account or in the conclusions of the auditor

Judgment shall be entered and execution shall issue only for the proportion ascertained to be payable to plaintiff, but the judgment shall remain a security for the payment of the residue of the legacy and costs out of assets which may thereafter come to the hands of the executor or administrator

Source R S 3 26-29

3A:26-29. Costs. The court upon consideration of the auditor's report, shall, according to justice and equity, either award no cost or costs out of the testator's estate or, if the defendant has delayed payment of the legacy, or a proportional part thereof, without sufficient cause, the court may award costs to be paid by the defendant personally

Source R S 3 26-30

C FOR LEGACIES AND DISTRIBUTIVE SHARES, IN COUNTY COURT

3A:26-30. Jurisdiction of actions for legacies and distributive shares. The county court shall have jurisdiction over suits for the recovery of legacies and distributive shares, in cases where the will has been proved in the same court or before the surrogate of the county in which the court sits, or an order of distribution has been made in the same court

Source R S 3 26-30 1

3A:26-31. Action for legacy or distributive share; proceeding. Suits to recover legacies and distributive shares before the county court may be summarily tried and determined by the court

Source R S 3 26-31

3A:26-32. Powers and duties of surrogate. In a suit pursuant to sections 3A 26-31, the clerk of the county court shall perform the same duties requisite of the clerk of the superior court in similar cases

Source R S 3 26-32

Article 6 CONTINGENT LEGACIES CHARGED ON REAL ESTATE

A PARTITION TO SATISFY LEGACY

3A:26-33. Apportionment of certain real estate to pay legacy; procedure. When a legacy, payable on a contingency which has not happened, is or may become a charge, at law or in equity, on real estate devised by will, any person in possession of a part of such real estate may apply to the superior court to set apart such portion of the real estate as may be sufficient for payment of the legacy

The court may, upon such notice to the parties in interest as is required to be given upon an application for partition of real estate, appoint 3 disinterested commissioners to set apart such sufficient portion of the real estate

The commissioners, having taken an oath faithfully and impartially to perform their duties shall, upon such notice to interested parties as the court shall direct, set apart by metes and bounds so much of the land devised so charged, or which may become chargeable, as will be sufficient for the payment of the legacy when payable, and the commissioners shall make report thereof to such justice or any other justice of the supreme court

Source R S 2 26-33

3A:26-34. Effect of apportionment. If the court approves the report, the real estate so set apart shall become charged or chargeable with such contingent legacy, and the residue of said real estate shall thereupon be entirely discharged from all lien, charge or liability with respect to such legacy; and said application and all papers relating thereto shall be filed and recorded in the office of the county clerk or register of deeds and mortgages, as the case may be, of the county wherein the real estate is situate and shall be plenary evidence of the lien on said real estate so set apart and of the discharge of said residue of said real estate

Source R S 3 26-34

B DEPOSIT OF MONEY TO SATISFY LEGACY

3A:26-35. Court to accept deposit; when; effect. When a legacy charged by will upon real estate is wholly or in part limited over

a To infants, mental incompetents or persons not in esse; or

b To persons who cannot be ascertained until the happening of an event named in the will; or

c. In such manner that the vesting of the legacy may be contingent—

The superior court may, upon application of the executor, or a person interested in the real estate, and hearing thereon, order the legacy paid into court together with such additional sums as the court may deem reasonable to cover the expense of investing and taking charge of the legacy Upon such payment into court, the real estate shall be wholly clear and discharged from the lien created by the will

Source R S 3 26-35

3A:26-36. Application for deposit. Application pursuant to section 3A 26-35 of this title shall be made and determined in a summary proceeding as provided by rules governing the superior court

Source R S 3 26-36

3A:26-37. Money; how deposited; disposition of interest. Moneys ordered to be paid into court pursuant to section 3A 26-35 of this title shall be deposited with the clerk of the superior court. All such moneys shall be kept at interest

on security by bond and mortgage on real estate within this state, worth, besides destructible improvements, double the amount invested, and the interest thereof, or such part of the interest as the court may direct, shall be paid to the persons who would for the time being be entitled to the interest in proportion to their respective shares therein Such securities shall be taken in the name of the superior court of New Jersey, and the interest shall be paid on the same, yearly or half-yearly or otherwise directly to the persons entitled to the same, unless otherwise directed by the court, who shall from time to time make such order for the investing of said money and the payment of the interest thereon as equity and justice may require.

Source R S 3 26-39

Article 7 RETURN OF LEGACY

3A:26-38. Return of legacy pro rata. Where there are several legatees and a return of part of a legacy shall afterwards appear necessary, each legatee shall only be compelled to return a proportional part of his legacy so as to make up the whole sum wanting

Source R S 3 26-40

Article 8 NONRESIDENT AND UNKNOWN DISTRIBUTUTES, DEPOSITIONS

3A:26-39. Depositions of nonresident or unknown claimants to estate. Whenever any executor, administrator or trustee has filed any account, or shall hereafter file any account, and application has been made or shall be made for a judgment of final or partial distribution, and it appears that in addition to the persons who are known to have an interest in such estate any other person or persons, whose names or places of residence are unknown may be entitled to participate in the distribution of the estate, respecting which an account is made, and it appears that persons interested in such estate, and unknown persons who may be entitled to participate in the final or partial distribution of the estate, reside in this state or in any other state of the United States or in foreign countries, and that adequate notice of such proceedings cannot be given to such interested or unknown claimants within the time now provided by law for the settlement of an estate, or of notice to file their claims to such estate after the making of an order so to do, and where many of the persons interested in such estate reside in foreign countries and adequate proof of their claim cannot be produced by any person interested in such estate now residing in this state or in the United States, the surrogate or deputy surrogate of the county in which such proceedings are pending or the clerk of the superior court may take the necessary testimony or deposition wherever such claimant or claimants may be found, or, the surrogate, county court or superior court before whom such accounting and application for final or partial distribution is pending

may issue a commission annexed to the will, in cases where there is a will, or concerning the administration of an estate, or otherwise, and directed to the judge of any court of law, mayor, recorder or other chief magistrate of any city or town, where such claimant or claimants may be found, or to any consul or vice consul of the United States, stationed in any foreign country, or to any attorney at law of New Jersey, or to any notary public, specially deputed by any such surrogate, county court, or the superior court, authorizing the taking of the depositions of such claimant or claimants under said will, in cases where there is a will, or concerning the administration of an estate, or otherwise, and the deposition or depositions of such claimant or claimants taken under oath and duly certified by the person to whom such commission shall be directed, shall have the same operation as if the same had been taken before the surrogate or court who issued such commission

Source R S 3 26-41

3A:26-40. Notice of settlement of account where testimony taken. The executor, administrator or trustee shall give such notice of such settlement of any account in all cases where testimony shall be taken, as shall be fixed by the surrogate or court.

Source R S 3 26-42

3A:26-41. Publication of notice. The notice to be published in the case of any person or persons whose names or places of residence are unknown, and some of such persons reside or are believed to reside out of the United States, or in all cases where testimony shall be taken, shall be published for 5 consecutive weeks, once in each week, in a newspaper printed and circulating in the county in which such order of publication is made or in a county designated by the court, and the last publication shall appear at least 20 days before the day fixed for the filing of such claim or claims

Source R S 3 26-43

3A:26-42. Time for filing claims; extensions of time for performance of act or giving of notice. The surrogate or court shall fix such time for the filing of claims in such estate, provide the method and manner in which notice shall be given to known and unknown claimants, and extend the time in any case for the doing of anything hereinbefore set forth, or for the performance of any act, or for the giving of any notice as the surrogate or court shall deem proper and best for the administration and distribution of such estate.

Source R S 3 26-44

Article 9 APPORTIONMENT OF FEDERAL AND NEW JERSEY ESTATE TAXES.

3A:26-43. Apportionment of federal and New Jersey estate taxes; definitions. For the purposes of this act

a. "The tax" means all taxes finally determined

to be due and payable by a fiduciary, under the laws now or hereafter enacted of the United States and under the laws now or hereafter enacted of this state imposing an estate tax

b "Gross tax estate" means all property of every description required to be included in computing the tax.

c "Fiduciary" means a person or corporation acting as an executor, administrator, administrator pendente lite, testamentary trustee or other person acting in a fiduciary capacity who is required to pay the tax

d "Transferee" means any person, corporation or association to whom the gross tax estate or any part thereof is, or may be, transferred or to whom any benefit therein accrues other than that part of the gross tax estate which passes under the will of decedent, or, if there be no will comes into the possession of fiduciary for administration as a part of the gross tax estate of decedent. The trustee of any inter vivos trust and the executor of, trustee or other fiduciary under, the will of any other decedent holding property included as a part of the gross estate shall be deemed to be a transferee

Source L 1950, c 327, p 1096, §1

3A:26-44. Apportionment of tax among fiduciary and transferees interested in gross tax estate. Whenever a fiduciary has paid or may be required to pay an estate tax under any law of the state of New Jersey or of the United States upon or with respect to any property required to be included in the gross tax estate of a decedent under the provisions of any such law, hereinafter called "the tax", the amount of the tax, except in a case where a testator otherwise directs in his will, and except in a case where by any instrument other than a will, hereinafter called a "nontestamentary instrument", a direction is given for apportionment within the fund of taxes assessed upon the specific fund dealt with in such nontestamentary instrument, shall be apportioned among the fiduciary and the transferees interested in the gross tax estate whether residents or nonresidents of the state, in accordance with the rules of apportionment herein stated, and the transferees shall contribute to the tax the amounts apportioned against them. Nothing in this act shall be taken to require an apportionment of an estate tax inter sese among the legatees, devisees and beneficiaries under a will or among those who take as the next of kin and heirs at law of a person dying intestate, or against the interest of any surviving spouse in any real property held in tenancy by the entirety.

Source L 1950, c 327, p. 1096, §2.

3A:26-45. Apportionment of tax where temporary interest is created. Where a trust is created, or other provision made in any instrument whereby any person is given an interest in income, or an estate for years, or for life, or other temporary interest in any property or fund,

the tax apportionable against both such temporary interest and the remainder thereafter shall, in the absence of directions to the contrary in the instrument, be charged against and paid out of the corpus of such property or fund without apportionment between remainders and temporary estates. The provisions of section 3 hereof shall apply notwithstanding that the holder of the temporary interest is given rights to the corpus.

Source L 1950, c 327, p 1097, §3

3A:26-46. Apportionment of tax to transferees in absence of directions to contrary. In the absence of directions to the contrary, (i) such part of the tax shall be apportioned to the transferees as bears the same ratio to the total tax as the ratio which the transferees' property included in the gross tax estate bears to the total property entering into the net estate for tax before the specific exemption, and the balance of the tax shall be apportioned to the fiduciary, the values as finally determined in the respective tax proceedings being the values to be used as the basis for apportionment of the respective taxes, (ii) any deduction allowed under the law imposing the tax by reason of the relationship of any person to the decedent or by reason of the charitable purposes of the gift shall inure to the benefit of the fiduciary or transferee, as the case may be subject nonetheless to the provisions of section 3 of this act; (iii) any deduction for property previously taxed and any credit for gift taxes paid by the decedent shall inure to the benefit of all transferees and the fiduciary and the tax to be apportioned shall be the tax after allowance of such deduction and credit; and (iv) any interest resulting from late payment of the tax shall be apportioned in the same manner as the tax and shall be charged by the fiduciary and any trustee of any inter vivos trust and any other transferee wholly against corpus.

Source L 1950, c 327, p 1097, §4

3A:26-47. Limitation on direction for apportionment or nonapportionment of tax. Any direction as to apportionment or nonapportionment of the tax, whether contained in a will or in a nontestamentary instrument, shall be limited in its operation to the property passing thereunder unless such will or instrument otherwise directs.

Source L 1950, c 327, p 1098, §5

3A:26-48. Recovery by fiduciary from transferees or others in possession of property included in tax. In all cases in which any property required to be included in the gross tax estate does not come into the possession of the fiduciary, he shall be entitled, and it shall be his duty, to recover from the transferees or from whoever is in possession of such property, the proportionate amounts of the tax and any interest thereon which is or may be payable by the transferees. The superior court or county court in a summary action may direct the payment thereof to the fiduciary and may charge

such payments against the shares or interests of the transferees in any assets in the hands of the fiduciary or person in possession of such property. If the fiduciary cannot recover the amount of the tax and interest thereon apportioned against a transferee, the amount not recoverable shall be dealt with in such manner as the court may determine. Nothing in this act shall require a person in possession of property to defer distribution of such property unless and until directed by the court.

Source L 1950, c 327, p 1098, §6

3A:26-49. Transfer or distribution of property; duties and liabilities of fiduciary. No person or corporation acting in a fiduciary capacity shall be required to transfer, pay over or distribute to any person other than the fiduciary charged with the duty to collect and pay the tax any fund or property with respect to which the tax is or may be imposed until the amount of the tax and any interest thereon apportioned or which may be apportioned against such fund or property and which may be due from the persons entitled to such fund or property is paid, or, if the tax has not been determined or apportionment made, until adequate security for such payment is furnished to the person making such transfer, payment or distribution. No fiduciary shall be under any duty to institute any action under this act or to make an apportionment thereunder until after the expiration of 3 months following the final determination of the tax; and no fiduciary, who within a reasonable time after the expiration of 3 months following the final determination of the tax shall proceed to carry out the duty imposed on such fiduciary by this section, shall be subject to liability or surcharge if the amount of the tax or any part thereof apportioned or to be apportioned against any transferee or person in possession of property shall be collectible at any time following the death of the decedent but shall thereafter be or become uncollectible.

Source L 1950, c 327, p 1099, §7

3A:26-50. Jurisdiction of superior court or county court. The superior court or county court in a summary action or any other action, including any action for the settlement of any account of the fiduciary, may apportion the tax and any interest, directing the fiduciary to collect the apportioned amounts from the property or interests in his possession of any transferees against whom such apportionment has been made and directing all other transferees against whom the tax and any interest thereon have been or may be apportioned or from whom any part of the tax and any interest thereon may be recovered to make payment of such apportioned amounts to such fiduciary. If it shall be ascertained in such an action that the property in the hands of the fiduciary, which belongs to a transferee liable for any part of the tax and interest thereon, is insufficient to discharge the

liability of such transferee, the court may direct that the balance of the apportioned amount due shall be paid to the fiduciary by such transferee, and if it shall be ascertained that more than the proportionate amount of the tax and interest thereon due from any transferee has been paid by him or on his behalf, the court may direct reimbursement of the overpayment
 Source L 1950, c 327, p 1099, §8

3A:26-51. Effective date: estates affected. This act shall take effect on January 1, 1951, and shall apply to the estates of all persons dying intestate on or after such date and to the estates of all persons dying testate on or after such date, provided, the will of such person has been executed or republished on or after such date
 Source L 1950, c 327, p 1100, §9

Chapter 26A. EXONERATION OF MORTGAGED REAL ESTATE.

Section

3A 26A-1 Descent or devise of mortgaged real estate, no exoneration

3A:26A-1. Descent or devise of mortgaged real estate; no exoneration. When real estate subject to a mortgage descends to an heir or passes a devisee, such heir or devisee shall not be entitled to have such mortgage discharged out of the personalty or any other real estate of the ances-

tor or testator, but such real estate so received by him shall be primarily liable for the mortgage debt, unless the will of the testator shall expressly or impliedly direct that the mortgage be otherwise paid.

Source R S 3 26A-1

Subtitle 4. GUARDIANSHIP OF VETERANS.

Part 1. UNIFORM LAW.

Chapter 27. GENERAL PROVISIONS.

Section

3A 27-1 Short title

3A 27-2 Definitions

3A 27-3 General rules of construction

Section

3A 27-4 Fees and costs

3A 27-5 No charges to be made for copies of certain records

3A:27-1. Short title. Chapters 27 to 32 of this title (§3A27-1 et seq) may be cited as the "uniform veterans' guardianship law".
 Source R S 3 27-1

3A:27-2. Definitions. As used in chapters 27 to 32 of this title (§3A 27-1 et seq)

"Federal agency" means any bureau, office, board or officer of the United States by whatever name known, now or hereafter charged by congress

a With payment of pensions, bounties and allowances to veterans of the military service of the United States, their widows, children, mothers and fathers; or

b With the administration of the affairs of any of the aforesaid persons who may be minors or mentally incompetent to manage pensions, bounties and allowances payable to them.

"Military" has reference to the army, navy, marine, air and coast guard services

"Estate" and "income" include only moneys received by the guardian from a federal agency and earnings, interest and profits derived therefrom.

"Benefits" means moneys payable by the

United States to the aforesaid persons or their guardians through a federal agency.

"Chief officer" means an officer of a federal agency, charged by the laws of the United States with the particular duty in connection with which the term is used

"Ward" means a beneficiary of a federal agency.

"Guardian" means a person acting as fiduciary for a ward.

Source R S 3 27-2, L 1929, c 187, p 350, §1

Note of Reporter This section differs from the uniform veterans' guardianship act, §1, 9 Uniform Laws Annotated, in that the uniform act does not contain the term "federal agency", but defines the term "bureau" as meaning the United States veterans' bureau or its successor, does not contain the term "chief officer", but defines the term "director" as meaning the director of the United States veterans' bureau or his successor, defines the term "benefits" as meaning all moneys payable by the United States through the bureau, and defines the term "person" as including a partnership, corporation or an association. In other respects the sections are substantially similar

3A:27-3. General rules of construction. Chapters 27 to 32 of this title (§3A 27-1 et seq) shall be liberally construed to secure to beneficial intent and purpose thereof and shall apply only

to beneficiaries enumerated in section 3A 27-2 of this title. Said chapters 27 to 32 shall also be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

The invalidity of any portion of said chapters 27 to 32 shall not affect the validity of any other portion thereof which can be given effect without such invalid part.

Source R S 3 27-3

3A:27-4. Fees and costs. Except as otherwise provided in chapters 27 to 32 of this title (§3A 27-1 et seq), no costs or fees shall be

charged or taxed by the surrogates or county courts of the respective counties for accounts rendered or other proceedings had under said chapters 27 to 32.

Source R S 3 27-4

3A:27-5. No charges to be made for copies of certain records. When a copy of a public record is required by a federal agency for use in determining the eligibility of a person to participate in benefits made available by the agency, the official charged with the custody of the public record shall furnish a certified copy of the record without charge.

Source R S 3 27-5

Chapter 28. APPOINTMENT OF GUARDIANS.

Section

3A 28-1 Guardians, when and how appointed

3A 28-2 Guardian to have no more than 5 wards, exceptions

3A:28-1. Guardians; when and how appointed. When, pursuant to any law of the United States or regulation of a federal agency, the chief officer of such agency requires, prior to payment of benefits, that a guardian be appointed for a ward, the appointment shall be made in the county court in the manner provided by the rules of the supreme court.

Source R S 3 28-1

Note of Reporter This section is substantially similar to §2 of the uniform veterans' guardianship act, 9 Uniform Laws Annotated.

3A:28-2. Guardian to have no more than 5 wards; exceptions. Except as provided in this section, no person shall accept appointment as guardian of a ward if he be acting as guardian for 5 wards.

Upon complaint of an attorney of a federal

Section

3A 28-3

to

3A 28-10 Blank.

agency, alleging that a guardian is acting in a fiduciary capacity for more than 5 wards and requesting his discharge for that reason, the county court, upon proper proof thereof, shall require a final accounting forthwith from the guardian and shall discharge him.

The limitation of this section shall not apply where the guardian is a bank or trust company or a public guardian of incompetent veterans, and an individual may be guardian of more than 5 wards if they are all members of the same family.

Source R S 3 28-2

3A:28-3

to

3A:28-10. Blank

Chapter 29. DETERMINATION OF MENTAL INCOMPETENCY.

Section

3A 29-1 Hearing by county court

3A:29-1. Hearing by county court. For the purpose of appointing a guardian pursuant to chapters 27 to 32 of this title (§3A 27-1 et seq), the mental incompetency of a beneficiary of a federal agency may be determined by the county court as provided by rules of the supreme court.

Source R S 3 29-1

Section

3A 29-2

to

3A 29-6 Blank

3A:29-2

to

3A:29-6. Blank.

Chapter 30. ACCOUNTS OF GUARDIANS.

Section

3A 30-1 Guardian to account, to county court, to federal agency

3A 30-2 Time for regular accounting

3A 30-3 Notice to federal agency, accounting when vouchers not filed

Section

3A 30-4 Removal of guardian on failure to account, costs

3A 30-5

to

3A 30-7 Blank.

3A:30-1. Guardian to account; to county court; to federal agency. In addition to any other duties imposed upon him by law, it shall be the duty of every guardian appointed by the surrogate's or county court of any county, who shall receive on account of his ward any moneys from a federal agency, once every 3 years, at the time hereinafter provided, to render to the county court of the county a true account of his administration of all moneys received by him, as guardian, by way of pension, bounty or other allowance from the United States, the account to be submitted in duplicate

Each year when not required to render an account to the court, the guardian shall render an account to the regional office, or other proper office of the federal agency from which his ward receives benefits, if the laws of the United States and regulations of the federal agency pursuant thereto require such accounting to be rendered. Where required, the accounting shall be rendered on forms to be supplied by the federal agency.
Source R S 3 30-1

Note of Reporter Section 9 of the uniform veterans' guardianship act, 9 Uniform Laws Annotated, provides, in connection with the filing of accounts, that, "Every guardian, who shall receive on account of his ward any moneys from the bureau, shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys so received by him, of all disbursements thereof, and showing the balance thereof in his hands at the date of such account and how invested. A certified copy of each of such accounts filed with the court shall be sent by the guardian to the office of the bureau having jurisdiction over the area in which such court is located."

3A:30-2. Time for regular accounting. Accounts pursuant to section 3A 30-1 of this title shall be rendered at the following times

In the county of Hudson, Somerset or Sussex, on or before January 5,

In the county of Warren or Essex, on or before February 5;

In the county of Bergen, Morris or Passaic, on or before March 5,

In the county of Union, Hunterdon or Middlesex, on or before April 5;

In the county of Mercer, Burlington, Monmouth or Gloucester, on or before May 5,

In the county of Camden, Atlantic or Salem, on or before June 5,

In the county of Cape May, Cumberland or Ocean, on or before July 5.

Source R S 3 30-2

3A:30-3. Notice to federal agency; accounting when vouchers not filed. The surrogate of any county with whom an account is filed shall mail, within 5 days of the date of filing, a copy thereof to the office of the veterans administration having jurisdiction over the area in which the county lies

The county court may allow the account without the submission of vouchers if the written approval of the attorney in this state for the veterans administration shall be filed with the account. Such approval shall set forth the facts upon which the approval is based

Source R S 3 30-5

3A:30-4. Removal of guardian on failure to account; costs. Upon the failure of a guardian to make and render an account as provided in chapters 27 to 32 of this title (§3A 27-1 et seq.), the federal agency, the sureties on the guardian's bond, any person interested in the benefits in the hands of such guardian or any person as next friend of the ward may serve notice upon the guardian that his account has not been filed in accordance with said chapters 27 to 32. This notice may be mailed to the guardian's last known address

If the guardian fails to render the account within 30 days from the date of mailing of the notice or from the time of service or within such time as the court may otherwise provide, the county court shall remove the guardian on proper proof of this failure so to account

The cost of the proceedings, as well as the cost incident to an order to show cause when the same is necessary to obtain an accounting, shall be paid by the guardian out of his own estate, unless the court shall otherwise order

Source R S 3 30-7

3A:30-5

to

3A:30-7. Blank

Chapter 31. MANAGEMENT OF ESTATES AND OF PROPERTY RECEIVED FROM SOURCES OTHER THAN THE UNITED STATES GOVERNMENT.

Section
3A 31-1 Investments
3A 31-2 Support of dependents
3A 31-3 Compensation of guardian

Section
3A 31-4 Proceeding to authorize guardian to receive additional personal property of not more than \$2,500
3A 31-5 Direction of court for expenditure required, investment
3A 31-6 Fees

3A:31-1. Investments. A guardian shall invest the funds of the estate in such manner and in such securities, in which the guardian has no

interest, as allowed by law or approved by the court

Source R S 3 31-1

Note of Reporter This section is substantially similar to §12 of the uniform veterans' guardianship act, 9 Uniform Laws Annotated

3A:31-2. Support of dependents. Except as permitted by this section, a guardian shall not apply any of the estate of his ward to the support and maintenance of other persons

When directed in writing by the proper federal agency, the guardian shall apply such portion of the estate to the ward's spouse, child, father or mother as may be set forth in the direction. The direction shall be submitted to the county court when an account is filed as proof of the guardian's authority for such payments

Source R S 3 31-2

Note of Reporter Section 13 of the uniform veterans' guardianship act, 9 Uniform Laws Annotated, provides that, "A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than his ward, except upon order of the court after a hearing, notice of which has been given the proper office of the bureau in the manner provided in section 9"

3A:31-3. Compensation of guardian. Compensation payable to a guardian shall not exceed 5 per cent of the income of the ward during any year

For extraordinary services rendered by the guardian, the county court may, after hearing thereon upon the settlement of his account, authorize additional compensation payable from the estate of the ward, but no compensation shall be allowed on the corpus of an estate received from a preceding guardian

The guardian may be allowed from the estate of his ward reasonable premiums paid by him to a corporate surety upon his bond

Source R S 3 31-3

Note of Reporter This section is substantially similar to §11 of the uniform veterans' guardianship act, 9 Uniform Laws Annotated

3A:31-4. Proceeding to authorize guardian to receive additional personal property of not more than \$2500. When an incompetent ward for whom a guardian has been appointed by a county court becomes entitled to personal property amounting to not more than \$2500 from any source other than the United States government, the county court may authorize the guardian to receive the personal estate for conservation and administrative care. On payment of any money or delivery of property to the guardian, a release executed by him to the person or persons paying or delivering the same shall be valid and effective

Source L 1950, c 117, §1

3A:31-5. Direction of court for expenditure required; investment. The guardian shall not expend any portion of such personal property received from any source other than the United States government, except as directed by the county court in a summary action, but he may invest the same as provided by section 3A 31-1 with respect to the estate

Source R S 3 33A-3

3A:31-6. Fees. The fees allowed by law shall be applicable to proceedings with respect to personal property received from sources other than the United States government, and may be taxed by the surrogates of the respective counties

Source R S 3 33A-4

Chapter 32. Blank.

Part 2 OTHER LAWS RELATING TO GUARDIANSHIP OF VETERANS

Chapter 33. PUBLIC GUARDIAN OF INCOMPETENT VETERANS.

Section

Article 1 Appointment and General Duties.

- 3A 33-1 Appointment of public guardian for veterans
- 3A 33-2 Guardian's bond
- 3A 33-3 Salary of public guardian
- 3A 33-4 Duties of public guardian as adviser of other guardians
- 3A 33-5 Discharge and removal of public guardian

Section

Article 2 Public Guardian as General Guardian in Certain Cases

- 3A 33-6 Public guardian may be appointed general guardian for veteran
- 3A 33-7 Powers of public guardian as guardian of veterans' estates
- 3A 33-8 Yearly report of accounts by public guardian
- 3A 33-9 Settlement of account upon death of ward
- 3A 33-10 Settlement of accounts upon expiration of public guardian's term
- 3A 33-11 Counsel to represent public guardian, compensation

3A:33-1. Appointment of public guardian for veterans. There may be appointed in each county a person to be known as "public guardian of incompetent veterans for the county of (naming county)", who shall be appointed by

the judge of the county court of such county. He shall hold office for the term of 5 years from the date of his appointment and until his successor is appointed and qualified

Source R S 3 33-1

3A:33-2. Guardian's bond. Before entering upon the duties of his office a public guardian of incompetent veterans shall execute a bond to the superior court in such amount and with such sureties as shall be approved by the county court of his county, conditioned for the faithful discharge of all duties imposed by law upon him.

The bond shall be renewed annually and shall, from time to time, be increased or reduced as such county court may direct.

The expense of procuring the bond shall be paid by the county treasurer upon presentation of a proper voucher approved by the county court.

Source R S 3 33-2

3A:33-3. Salary of public guardian. The public guardian of incompetent veterans shall receive an annual salary to be fixed by the county court of the county for which the guardian is appointed, by and with the approval of the board of freeholders of such county.

Such salary shall be paid by the county treasurer in semimonthly payments and shall be in lieu of all other charges, compensation and commissions. No such guardian shall accept any other money whatsoever by way of fee, compensation, gratuity or present for any of his services.

Source R S 3 33-3

3A:33-4. Duties of public guardian as adviser of other guardians. The public guardian of incompetent veterans shall, in each county, assist, supervise, advise and otherwise aid the duly appointed guardians of incompetent veterans and give such help as may be necessary in preparing and drawing papers and documents, and also help them to work in conjunction with the United States veteran's administration, to the end that their wards may be fully protected.

Source R S 3 33-4

3A:33-5. Discharge and removal of public guardian. The public guardian of incompetent veterans shall be subject to discharge or removal, by the court which appointed him, on the grounds and in the manner in which other guardians of mental incompetents are discharged or removed.

Source R S 3 33-5

Article 2 PUBLIC GUARDIAN AS GENERAL GUARDIAN IN CERTAIN CASES.

3A:33-6. Public guardian may be appointed general guardian for veteran. Where an action is brought in the county court for the appointment of a guardian for a person who, while in the military, naval, marine, air or coast guard service of the United States, or after discharge therefrom, is or shall have been found and determined to be mentally incompetent, whether or

not he is or shall have been committed or confined to an institution for the care of the insane, and the next of kin of such person is unwilling, unable or unqualified for such appointment, or in case it shall appear to the court that the best interests of such person require it, the county court may appoint the public guardian of the county wherein such person resides as his guardian.

Source R S 3 33-6

3A:33-7. Powers of public guardian as guardian of veterans' estates. The public guardian of incompetent veterans shall have, in respect of any veteran and the estate of any veteran for whom he has been appointed guardian, the same power and authority as any other duly appointed guardian of a mental incompetent.

Source R S 3 33-7

3A:33-8. Yearly report of accounts by public guardian. During the month of January of each year, the public guardian shall present to the county court of his county, for its approval, an account of his receipts and disbursements, in each estate of which he is duly appointed guardian, and shall present therewith receipts and vouchers showing all moneys received and expended by him during the preceding year and the balance remaining in his hands in each of such estates.

The guardian may, upon the application of any person in interest, be required by the county court to prove and settle his account in the manner prescribed for other guardians of mental incompetents.

Source R S 3 33-8

3A:33-9. Settlement of account upon death of ward. Upon the termination of a guardianship, by death of his ward or otherwise, the public guardian shall settle his account as guardian in the same manner as other guardians of mental incompetents.

Source R S 3 33-9

3A:33-10. Settlement of accounts upon expiration of public guardian's term. The public guardian shall proceed to settle the accounts of all estates of which he is duly appointed guardian notwithstanding the expiration of his term of office.

Source R S 3 33-10

3A:33-11. Counsel to represent public guardian; compensation. The public guardian of incompetent veterans may, when authorized by the county court of the county of his appointment, employ counsel to represent him.

The compensation of such counsel shall be fixed by the county court and paid from moneys in the guardian's hands belonging to the estate involved in litigation.

Source R S 3 33-11

Chapter 33A. Blank.

Subtitle 5. SALE OR MORTGAGE OF REAL ESTATE LIMITED OVER.

Chapter 34. SALE TO PAY LOCAL OR PUBLIC IMPROVEMENT ASSESSMENTS.

Section
3A 34-1 Application and order for sale, parties to proceeding

3A:34-1. Application and order for sale; parties to proceeding. If real estate, in which there is an estate for life in dower, by the curtesy or otherwise, is or becomes chargeable with any assessment for local or public improvements, and such real estate is or may become liable by force of law to be sold for the payment of such assessment, the superior court may, upon complaint, filed, in a civil action, by any person interested, order an officer designated by the court for that purpose, to sell such real estate, either in whole or in part, as shall be deemed for the best interest of the persons interested therein

Before any such sale shall be ordered, all persons in being who are entitled to any estate in such real estate, in possession, remainder or reversion, shall be made parties to said proceeding

Source R S 3 34-1, as am L 1949, c 183, p 591, §1, L 1950, c 114, p 207, §1

3A:34-2. Approval and confirmation of sale; deed; title conveyed. When a sale of real estate ordered pursuant to section 3A 34-1 of this title is made, and after it has been reported to and approved and confirmed by the court, if confirma-

Section

3A 34-2 Approval and confirmation of sale, deed, title conveyed.

3A 34-3 Disposition of proceeds of sale

tion thereof is required under the practice and procedure of the superior court, the officer making the sale shall execute and deliver to the purchaser thereof a deed therefor, which deed shall convey to and vest in the purchaser a fee simple in the real estate so sold and conveyed. Source R S 3 34-2, as am L 1949, c 183, p 592, §2, L 1950, c 114, p 208, §2

3A:34-3. Disposition of proceeds of sale. Out of the proceeds of a sale of real estate made pursuant to section 3A 34-1 of this title the officer making the sale shall pay and satisfy the local or public improvement assessments against the real estate and the costs and expenses of the sale, and he shall present a statement of his payments to the court for its approval and allowance

The surplus from such sale shall be paid into the court, to be apportioned by order of the court among the persons having estates or interests in the real estate so sold, or to be invested in the manner provided by law for the investment of the proceeds of sales of real estate by order of a court, freed and discharged from estates in dower or by the curtesy, or otherwise Source R S 3 34-3, as am L 1949, c 183, p 592, §3

Chapter 35. SALE OR MORTGAGE TO PAY LEGACIES OR OTHER ENCUMBRANCES.

Section
3A 35-1 Application and order, appointment of trustee

3A:35-1. Application and order; appointment of trustee. Whenever real estate is devised, conveyed to or held by (a) an executor or trustee in trust for any person for life or until the happening of some event specified in the instrument creating or continuing the trust, or (b) a trustee in trust with power to sell at a specified time or upon the happening of some event, or (c) a person for life or until the happening of some event named in the instrument creating such an estate, and such real estate (1) is, at the time of taking effect of the devise or conveyance charged with the payment of a legacy, encumbered with a mortgage or subject to the lien of any judgment, tax or assessment, or (2) at any time thereafter, becomes chargeable with or subject to any judgment, tax or assessment, or (3) has been sold or shall be liable to be sold for taxes or assessments, and no adequate provision is

Section

3A 35-2 Sale free and clear, disposition of proceeds

afforded by the estate of the testator for the discharge, satisfaction or payment of such legacy, mortgage, judgment, tax or assessment, or none except out of income from the real estate affected, and, because of such a situation, the interests of the life tenant, cestui que trust or owners of the particular estate or of the estates in remainder or reversion may be injured, impaired or lost, the superior court may, upon complaint by the fiduciary, cestui que trust, or owner in a civil action and upon all interested persons being made parties to said proceedings, order the fiduciary to sell and convey or mortgage such real estate, or some part thereof, as the court may deem most beneficial to all parties in interest, or the court may, when such real estate has been devised or conveyed to a person for life or until the happening of some event named in the will, appoint a trustee to sell and convey or mortgage

such real estate, and the trustee for all said owners so appointed shall, before making sale, give security for the faithful performance of his duties as trustee, in such form and for such an amount as the court shall order.

Source R S 3 35-1, as am L 1949, c 115, p 478, §1

3A:35-2. Sale free and clear; disposition proceeds. When an order is made pursuant to section 3A 35-1 of this title, the person therein authorized so to do may sell and convey or mortgage the real estate, or such part thereof as may be necessary for the purpose, for such price or in such amount as the order may direct and

the sale or mortgage shall be free and clear of any interest of the cestui que trust and owners of the real estate

The proceeds of the sale or mortgage shall be used to discharge and satisfy the liens, encumbrances and charges mentioned in said section 3A 35-1 and interest thereon together with the costs and expenses of sale or the procurement of the mortgage loan, and any surplus shall be held by the executor or trustee in accordance with the provisions of the instrument creating or continuing such estates or trust, in such manner as the court may direct

Source R S 3 35-2, as am L 1949, c 115, p 479, §2

Chapter 36. SALE OF REAL ESTATE LIMITED OVER TO INFANTS, MENTAL INCOMPETENTS, PERSONS NOT IN BEING OR ON CONTINGENCY.

Section	
3A 36-1	Application for sale, inquiry by superior court
3A 36-2	Proceeds of sale paid into court, securities deposited with clerk
3A 36-3	Costs and expenses of investment and reinvestment of proceeds of sale paid out of accrued interest
3A 36-4	Investment of proceeds of sale
3A 36-5	Distribution of income from proceeds of sale in general, distribution of principal
3A 36-6	Distribution of proceeds of sale to fiduciaries, disposition thereof by fiduciaries
3A 36-7	Proceeds of sale, direction of payment to person having vested interest, bond for repayment

Section	
3A 36-8	Sale free from encumbrances, taxes, assessments and water rents, encumbrancers parties to proceedings
3A 36-9	Sale of land separate from buildings thereon, removal and sale of buildings
3A 36-10	Life tenant not liable for taxes, assessments or water rents
3A 36-11	All taxes, assessments or water rents paid from proceeds of sale of part of real estate
3A 36-12	Disputed taxes, assessments or water rents
3A 36-13	Proceeds of sale of real estate paid into court of chancery or superior court, payment to persons with vested interests, bond for repayment
3A 36-14	to
3A 36-21	Blank

3A:36-1. Application for sale; inquiry by superior court. Whenever any future or contingent estate in real estate is or may be, wholly or in part, limited over to infants, mental incompetents or persons not in being, or in such a manner that the vesting or duration of such estate may be contingent, or whenever the proceeds arising from a sale of real estate may be, wholly or in part, limited over to infants, mental incompetents or persons not in being, and the interests of the owners of the particular and future estates in such real estate, or in the proceeds arising from a sale thereof, require and would be promoted by a sale thereof, the superior court, upon the application of any person owning a vested interest therein in a civil action, may inquire into the situation of such real estate and the merits of such application, and shall, if satisfied from such inquiry that the situation and prospective value of such real estate are such that it would be to the interest of any person who might own the same in fee to sell the same, direct a sale thereof in fee

Source R S 3 36-1, as am L 1949, c 278, p 855, §1

3A:36-2. Proceeds of sale paid into court; securities deposited with clerk. All moneys arising from a sale of real estate made under authority of this chapter shall be paid into the court, and all securities and mortgages taken to

secure the payment of any part of the sale price shall be taken in the name of the superior court of New Jersey and be deposited with the clerk of the superior court

Source R S 3 36-8, as am L 1949, c 278, p 859, §8, Rev 1877, p 1053, §45 [C S p 4690, §46]

3A:36-3. Costs and expenses of investment and reinvestment of proceeds of sale paid out of accrued interest. The costs and expenses incurred after a sale made under authority of this chapter, in investing and reinvesting the purchase money and relating to the payment of interest shall be paid out of the interest accruing from the purchase money, and not out of the principal sum

Source R S 3 36-10

3A:36-4. Investment of proceeds of sale. All moneys arising from a sale of real estate made under authority of this chapter shall, after the costs and expenses of the proceedings and the sale have been paid therefrom as provided by the rules of the superior court be invested in the manner following

a On loan, at interest, on security by bond and mortgage on real estate within this state, worth, besides destructible improvements thereon, double the amount loaned; or

b In real estate within this state, worth with the improvements thereon, double the amount invested, or

c In public securities of the United States or of this state, or

d In tax sales certificates on other real estate in this state, in which some or all of the infant or mental incompetent parties are interested

All securities taken upon the loans and investments herein authorized shall be taken in the name of the superior court of New Jersey

Rule The chief justice shall from time to time make such orders for the investment or reinvestment of the moneys arising from a sale made pursuant to R S 3A 36-4 as equity and justice may require

Source R S 3 36-11, as am L 1949, c 278, p 859, §10

3A:36-5. Distribution of income from proceeds of sale in general; distribution of principal. The income derived from or investment of the proceeds of a sale of real estate made under authority of this chapter, including the interest accruing on bonds and mortgages given to secure the payment of a part of the purchase price of the real estate sold, or such part thereof as the court may direct, shall be paid to the person or persons who would, for the time being, according to the limitations upon the real estate sold or the proceeds thereof, have been entitled to the particular estate therein, in proportion to their respective shares therein. Such income shall, unless the court shall otherwise direct, be paid directly to the person or persons entitled thereto, semiannually or otherwise as the court shall direct.

In any case where justice and equity may so require, the court may direct part of the income only to be paid to the tenant of a particular estate in the real estate sold, and the residue of such income to be accumulated for the tenant in remainder in fee or the person having a like interest in the proceeds arising for a sale of such real estate

When, by the limitations upon the real estate sold, the absolute fee to the whole thereof, or to a share therein, would have vested in any person, the whole or the proper share of such person in the proceeds of the sale of the real estate, together with the accumulated income, shall be paid by order of the court to such person

Source R S 3 36-12, as am L 1949, c 278, p 860, §11

3A:36-6. Distribution of proceeds of sale to fiduciaries; disposition thereof by fiduciaries. When it shall appear to the satisfaction of the court that there is an executor, trustee, administrator with the will annexed, substituted administrator with the will annexed or substituted trustee, appointed by any last will and testament or by virtue of an order of any court, who, by virtue of such will, has authority to collect and receive the rents and issues of all or any part of real estate sold under authority of this chapter during the life or lives of any person or persons named in such will or until the happening of a contingency or contingencies provided for in such will, but who has no power to sell such real

estate or any part thereof, upon such fiduciary giving bonds to the superior court in the manner required by law upon the granting of letters of administration, in the office of the clerk of the court wherein such will was proved or from which he received his appointment, the court may decree that the proceeds of the sale of such real estate, or interests therein, of which such fiduciary was entitled to the rents and profits, shall be paid over to such fiduciary, to be by him held and invested according to the law governing other trust funds, and the income therefrom to be paid and applied by the fiduciary to the person or persons entitled to the rents and profits of the real estate so sold, and, upon the death of the person or persons entitled to such income, or upon the happening of the contingency or contingencies provided for in the will, that the principal sum be paid to the person or persons entitled thereto under the will

Source R S 3 36-13, as am L 1949, c 278, p 861, §12

3A:36-7. Proceeds of sale; direction of payment to person having vested interest; bond for repayment. When it shall appear to the satisfaction of the superior court that real estate has been sold under authority of this chapter, upon the application of a life tenant or other persons having a vested interest therein, and that the proceeds of such sale have been paid into the court, to be kept at interest, and that the only persons who might have an interest in the said proceeds of sale, or any part thereof, are persons not in being, or persons who have contingent interests therein and that, with the exception of such persons not in being, or having such contingent interests the person upon whose application the real estate was ordered sold is entitled to the entire proceeds of the sale, the court may order that the proceeds of such sale be paid to the life tenant or other person having a vested interest in such real estate, upon the execution by such life tenant or other person of a bond, with sufficient surety, to the superior court of New Jersey, to be approved by the court, and conditioned that, in the event of the birth of any person or persons not in being at the time of the making of the order for payment, who might have an interest in such real estate or in the proceeds arising from a sale thereof, or of the vesting of any contingent interest therein such life tenant or other person will repay into the court such proceeds, or such part thereof as he may be ordered to pay by the court upon the coming into being of such person or persons, or the vesting of such contingent interest in any person

Source R S 3 36-14, as am L 1941, c 298, p 811, §1, L 1949, c 278, p 862, §13, L 1950, c 114, p 210, §4

3A:36-8. Sale free from encumbrances, taxes, assessments and water rents; encumbrancers parties to proceedings. In any proceedings for the sale of real estate under authority of this chapter, the court may inquire into and ascertain

the nature and amount of the encumbrances upon such real estate, and the amount of the taxes, assessments and water rents chargeable against such real estate, and may order the sale to be made free and clear of all encumbrances, and order such encumbrances to be paid out of the proceeds of the sale

If it shall appear to the satisfaction of the court that the income from the real estate sought to be sold has been insufficient to pay the taxes, assessments and water rents thereon, and that the person owning a vested estate in such real estate, whether a life tenant or otherwise, has borrowed money to pay such taxes, assessments or water rents, and that such debt remains unpaid at the time of the sale, the court may order such debt to be paid out of the proceeds of the sale, if it appears to him to be just and equitable so to do

No encumbrances, except for taxes, assessments or water rents, shall be affected or the lien thereof cut off by a sale under authority of this chapter, unless the owner thereof is made a party to the complaint for the sale

Source R S 3 36-15, as am L 1949, c 278, p 862, §14, L 1950, c 114, p. 210, §5

3A:36-9. Sale of land separate from buildings thereon; removal and sale of buildings. If real estate sought to be sold under authority of this chapter is composed of city lots and covered by large, old and dilapidated buildings which must be removed before a sale can be had to advantage, the court may order the buildings to be sold separate from the land and removed therefrom. If, at such sale, no bidders can be found who will bid for and agree to remove the old and dilapidated buildings and material, the officer making the sale shall report the facts to the court, which may thereupon order the officer to have such buildings torn down and the wreckage prepared for market and sale and sell the same, and if such wreckage cannot be sold for enough to pay for its tearing down and removal, the court may order the deficiency to be paid out of the proceeds of the sale of the real estate

Source R S 3 36-16, as am. L 1949, c 278, p 863, §15

3A:36-10. Life tenant not liable for taxes, assessments or water rents. If, in a proceeding for the sale of real estate under authority of this chapter, it shall appear to the satisfaction of the court that the person holding a life estate or a vested estate of any nature therein, created by deed or last will and testament, is the widow of the person creating the same, and that the creation of such estate was for her maintenance and support, and that such real estate consists of vacant lands which have become unproductive, or that the buildings thereon are old and dilapidated so that they have no rental value, or if the buildings should be destroyed by fire, and the estate, productive at the time of making such deed or will, should become partially or wholly

unproductive, the life tenant or person holding the vested estate shall not be liable for the payment of taxes, assessments and water rents chargeable against the real estate, unless the income from the property was adequate for the support of the widow and the payment of the taxes, assessments and water rents, but such charges shall be liens upon the real estate ordered to be sold and shall be paid out of the proceeds arising from such sale.

Source R S 3 36-18, as am L 1949, c 278, p 864, §17

3A:36-11. All taxes, assessments or water rents paid from proceeds of sale of part of real estate. If the real estate sought to be sold under authority of this chapter consists of different tracts and parcels, and the whole becomes chargeable with taxes, assessments and water rents, and if, by a sale of part of the premises, all the taxes, assessments and water rents could be discharged on all the real estate charged with the future or contingent estate, the court may order the taxes, assessments and water rents on the whole of the real estate to be paid out of the proceeds of the sale of that portion thereof ordered to be sold, and that the balance of the real estate be freed from all such taxes, assessments and water rents

Source R S 3 36-19, as am L 1949, c 278, p 864, §18

3A:36-12. Disputed taxes, assessments or water rents. If, in a proceeding to sell real estate under authority of this chapter, any tax, assessment or water rent charged against such real estate is disputed, the court may order the real estate sold free and clear of the disputed tax, assessment of water rent, and order that a sufficient sum to discharge such tax, assessment or water rent, with the interest to accrue thereon, be deposited with the clerk of the court to abide the result of the settlement of the dispute, and that when the tax, assessment or water rent is determined to be a legal lien on the real estate ordered to be sold, the same shall be paid out of the sum so deposited

If the disputed tax, assessment or water rent is set aside, or found not to be a legal lien upon the real estate ordered to be sold, the sum deposited for the payment thereof shall be loaned or invested in the manner provided by this chapter, but if, when the disputed tax, assessment or water rent is set aside, a new tax, assessment or water rent is directed, the sum so deposited shall be chargeable with the payment thereof

The court, may, when it orders a sale and a deposit of a sum of money with the clerk as herein provided, order that the interest on the disputed tax, assessment or water rent shall cease from the date of the sale, and that the interest to be allowed after the date of the sale shall be the amount allowed on the deposit made with the clerk

Source As am L 1942, c 278, p 865, §19, L 1950, c 114, p 211, §6

3A:36-13. Proceeds of sale of real estate paid into court of chancery or superior court; payment to persons with vested interests; bond for repayment. Whenever it shall appear to the satisfaction of the superior court that real estate or any interests therein has or have been sold by any executor, trustee or any duly appointed or otherwise legally authorized person, and that the proceeds of such a sale have been paid into the court of chancery or into the superior court, to be kept at interest, or are held by such fiduciary subject to the provisions of the last will and testament or deed, by the terms or provisions of which the real estate has been devised or conveyed to such fiduciary and that the only persons whose interests in the proceeds of such a sale are not vested, but are either prospective or contingent, are persons not in being, and that, with the exception of such persons not in being, the persons owning vested interests are entitled to the entire proceeds of such a sale, the superior court may order that such proceeds be paid to

the person or persons owning such vested interests, upon the execution by him or them of a proper bond or bonds to the superior court of New Jersey.

Such bond or bonds shall be approved by the court, shall in the discretion of the court, be with or without sureties, and shall provide that, upon the coming into being of any person or persons not in being at the time of the making of the order for such payment, who might have an interest in the said real estate, or in the proceeds of said sale, such person or persons to whom the proceeds of the sale have been so paid will repay into the superior court the proceeds of said sale, or such part thereof as he or they may be ordered to pay by the superior court

Source As am L 1949, c 278, p 865, §20, L 1950, c 114, p 212, §7

3A:36-14

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3A:36-21. Blank.

Subtitle 6. DOWER, JOINTURE AND CURTESY.

Chapter 37. IN GENERAL.

Section

3A 37-1 Dower, estate of
3A 37-2 Curtesy, estate of

Section

3A 37-3 Trust estates not subject to dower or curtesy
3A 37-4 Quarantine

3A:37-1. Dower; estate of. The widow, whether alien or not, of a person dying intestate or otherwise, shall be endowed, for the term of her natural life, of the 1 full and equal half part of all real estate whereof her husband, or another to his use, was seized of an estate of inheritance at any time during coverture, to which she shall not have relinquished or released her right of dower by deed duly executed and acknowledged in the manner provided by law for deeds to be recorded

Source R S 3 37-1, L 1927, c 68, p 124, §1

3A:37-2. Curtesy; estate of. The widower, whether alien or not, of a person dying intestate or otherwise, shall be endowed, for the term of his natural life, of the 1 full and equal half part of all real estate whereof his wife, or another to her use, was seized of an estate of inheritance at any time during coverture, whether issue be born or not, to which he shall not have relinquished or released his right of curtesy by deed duly executed and acknowledged in the manner provided by law for deeds to be recorded, which shall be known as curtesy and which right of curtesy shall be enforced, admeasured and determined in the same manner and according to

the same procedure and subject to the same limitations and restrictions as is provided by law in case of dower

Source R S 3 37-2, L 1927, c 71, p 128, §1, as am L 1928, c 209, p 380, §1

3A:37-3. Trust estates not subject to dower or curtesy. When a deed, conveyance or will vests title to real estate in a trustee to hold in trust for the benefit of a cestui que trust, and a provision of trust appears on the face of the deed, conveyance or will, the wife or husband of the trustee shall not have a right or estate of dower or curtesy in the trust estate, and the trustee may, by his or her individual deed, convey the same free from any such right or estate

Source R S 3 37-3

3A:37-4. Quarantine. Until dower or curtesy is assigned, the widow or widower may remain in, hold and enjoy the home of his or her spouse and the land belonging thereto, without being liable to pay rent therefor

After assignment of dower or curtesy, the rights confirmed in and granted to the widow or widower by this section shall cease

Source R S 3 37-4

Chapter 38. ACTIONS RELATING TO DOWER AND CURTESY; WRITS OF DOWER.

Section

Article 1. Action to Recover Dower or Curtesy

3A 38-1 Action to recover dower or curtesy, damages

Article 2 Admeasurement in County Court and Superior Court

3A 38-2 Admeasurement

3A 38-3 Costs

3A 38-4 Where admeasurement cannot be had without prejudice, sale as in partition

Article 1 ACTION TO RECOVER DOWER OR CURTESY

3A:38-1. Action to recover dower or curtesy; damages. A widow or widower deprived of dower or curtesy in any real estate, or who cannot have it without instituting a civil action, or whose right is unfairly assigned, or is not assigned within 40 days after the death of his or her spouse, may recover the same together with damages sustained up until judgment by reason of the use and enjoyment thereof being unlawfully withheld, but as to real estate whereof his or her spouse was previously seized, but not seized at death, damages shall be recovered only from such time as he or she shall make demand upon the owner for dower or curtesy therein

Source R S 3 38-1

Article 2 ADMEASUREMENT IN COUNTY COURT AND SUPERIOR COURT

3A:38-2. Admeasurement. A widower or widow entitled to curtesy or dower in real estate whereof his or her spouse died seized, an heir, devisee, or guardian of a minor or mental incompetent entitled to an estate in the real estate, or a purchaser thereof, may institute a civil action in the county court of the county wherein the real estate is situate for the assignment to the widower or widow of his or her curtesy or dower therein.

When a husband or wife dies seized of real estate in 2 or more counties, such action may be instituted in the superior court

Source R S 3 38-4, R S 3 38-9

3A:38-3. Costs. The costs of a complaint for admeasurement pursuant to section 3A 38-2 shall be divided and apportioned by the court among the persons concerned, according to their respective interests in the real estate out of which dower or curtesy is assigned

If any person concerned fails to pay on demand his proportion of the costs and charges, the petitioner shall and may recover the same by judgment and process of the court or by a separate civil action.

In cases of appeal, each party shall pay his own costs

Source R S 3 38-8

3A:38-4. Where admeasurement cannot be had without prejudice; sale as in partition. When

Section

3A 38-5 Appeal to the appellate division of the superior court

Article 3 Admeasurement by Purchaser at Public Sale

3A 38-6 Admeasurement when real estate is sold subject to dower or curtesy by judgment

3A 38-7 Effect of admeasurement

3A 38-8

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the superior court, or county court determines that the real estate, or part thereof, is so circumstanced that dower or curtesy cannot be assigned, admeasured and set off without prejudice to the owners, the court may take such proceedings in regard to the report and the sale of the real estate and the confirmation thereof as may be had on sale pursuant to partition where actual partition cannot be had without prejudice to owners and the court may order the real estate sold free from dower or curtesy, making compensation for the value thereof

Source R S 3 38-10

3A:38-5. Appeal to the appellate division of the superior court. The widow, widower, heirs, devisees, or guardian of a minor or mental incompetent, or a purchaser, may, if aggrieved by the final judgment of any county court or of the superior court pursuant to this article, take an appeal to the appellate division of the superior court

Source R S 3 38-11

Note of Reporter Time for appeal from a final judgment in the county court is 45 days (Rule 1 2-5) Appeal from the county court is to the appellate division (Rule 4 2-1(b)) Grounds of appeal are abolished (Rule 1 2-8)

Article 3 ADMEASUREMENT BY PURCHASER AT PUBLIC SALE

3A:38-6. Admeasurement when real estate is sold subject to dower or curtesy by judgment. If real estate is lawfully sold by a sheriff, assignee in bankruptcy or other public officer, whereby an inchoate right of dower or curtesy does or shall remain, the purchaser shall have the right, upon petition to the county court of the county wherein the real estate is situate, or, if situate in more than one county, to the superior court to have one half part thereof, or such other part according to the law in force when the right or estate became vested, admeasured and set off as and for the dower or curtesy portion

Source R S 3 38-12

3A:38-7. Effect of admeasurement. If the dower or curtesy estate becomes consummate after an admeasurement authorized by section 3A 38-6 of this title, the widow or widower shall have for his or her life the portion so admeasured, and the remaining portion of the real estate shall be held by the purchaser free and clear of all right or estate of dower or curtesy from

the time of the judgment of the court so ad-measuring, unless the same be set aside or reversed.

Source R S 3 38-13.

3A:38-8

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3A:38-20. Blank

Chapter 39. BAR IN GENERAL.

Section

3A 39-1 Bar by devise, election of widow or widower

3A 39-2 Bar by adultery

3A 39-3 Bar by jointure, dower

Section

3A 39-4 Waiver of jointure, effect of demand

3A 39-5 Eviction from jointure

3A 39-6 Blank

3A:39-1. Bar by devise; election of widow or widower. If a husband or wife makes a valid devise of real estate to his or her spouse, for life or otherwise, without expressing whether or not it is intended to be in lieu or bar of dower or curtesy, the surviving spouse shall not be entitled to dower or curtesy in any real estate devised by the will, unless, within 6 months after probate of the will, he or she files with the surrogate of the county wherein he or she resides or wherein the real estate so devised to him or her is situate, a written refusal to receive the same in satisfaction and bar of dower or curtesy in other real estate, by which refusal he or she shall be deemed to have renounced the devise in bar of dower or curtesy

Source R S 3 39-1

3A:39-2. Bar by adultery. If a married person voluntarily leaves his or her spouse and goes away and continues with his or her paramour, such person shall be forever barred from having jointure, dower or curtesy, as the case may be, unless the deserted spouse voluntarily becomes reconciled to and lives with the deserting spouse, in which case jointure, dower or curtesy shall be restored

Source. R S 3 39-2

3A:39-3. Bar by jointure; dower. A widow may be barred of her dower by jointure

Source R S 3 39-4

3A:39-4. Waiver of jointure; effect of demand. If a jointure is made before an intended wife becomes of age, or during her marriage, the widow may, at her election, waive the jointure and demand and have her dower.

If a jointure shall, through any defect, fail to be a legal bar to dower and the widow, availing herself of such defect, shall demand her dower, the estate or interest so conveyed or assured to such widow shall thereupon cease and determine

Source R S 3 39-5

3A:39-5. Eviction from jointure. If a widow be lawfully expelled or evicted from her jointure, or from any part thereof, without fraud or covin, by lawful entry or action, or by discontinuance of her husband, she shall be endowed of so much of the residue of her husband's real estate whereof she would have been endowed but for the jointure, as shall equal in amount or extent the real estate from which she is so expelled or evicted

Source R S 3 39-6

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Chapter 40. SALE OR MORTGAGE OF REAL ESTATE FREE OF DOWER OR CURTESY.

Section

Article 1 Sale or Mortgage and Release When Doweress or Curtesy Holder Incompetent

3A 40-1 Direction by superior court, release executed by person designated

3A 40-2 Bond to protect doweress or curtesy holder

3A 40-3 Invested fund to protect doweress or curtesy holder

3A 40-4 Cash settlement of dower or curtesy

3A 40-5 Restoration to competency, provisions for settlement

3A 40-6 Failure of person restored to competency to execute a release, determination of gross sum to be paid

Section

Article 2 Release of Dower or Curtesy in an Estate of a Person under Disability, Sale or Mortgage of Estate

3A 40-7 Satisfying dower or curtesy, or estate in lieu thereof out of proceeds of sale, mortgage or conveyance, or authorizing mortgage to raise sum

3A 40-8

to

3A 40-11 Blank

Article 1 SALE OR MORTGAGE AND RELEASE WHEN DOWERESS OR CURTESY HOLDER INCOMPETENT.

3A:40-1. Direction by superior court; release executed by person designated. When it shall appear to the satisfaction of the superior court that a person entitled to an inchoate or con-

summate right or estate of dower or curtesy is incapacitated by mental infirmity or disease from executing a valid release or relinquishment of the same or from joining in a conveyance or mortgage thereof, and that the interest of such person and the owner of the real estate require and will be promoted by a sale or mortgage of

the same, the court may direct such release, relinquishment or joinder to be made by any officer or person designated by the court for that purpose

The release, deed or mortgage so executed in behalf of such person shall release and bar all right or estate of dower or curtesy in the real estate therein mentioned

Source R S 3 40-1, as am L 1949, c 223, p 705, §1

3A:40-2. Bond to protect doweress or curtesy holder. If a release, conveyance or mortgage is allowed and ordered by the court in conformity with the demand of the complaint, a bond shall be given by the owner of the real estate to the superior court or to the guardian of the incapacitated person in such penalty and with such surety as the court may direct, to secure to the guardian of the person so entitled to a right or estate of curtesy or dower consummate, the enjoyment during his or her life of a fund equal to such an amount of the whole proceeds of the sale or other conveyance of real estate, or of their value, as will equal the amount of curtesy or dower to which he or she shall be entitled at the time when his or her right or estate vested, or, if the curtesy or dower interest be inchoate, to secure the enjoyment of such fund to the person so entitled during his or her life, after the same becomes consummate

Source R S 3 40-9, as am L 1949, c 223, p 706, §3

3A:40-3. Invested fund to protect doweress or curtesy holder. In lieu of a bond, the superior court may direct that a fund, constituted as provided in section 3A 40-2 of this title, be invested under its direction, and the interest shall in such case be paid as follows

a If the dower or curtesy estate is consummate the interest shall go for life to the person entitled to such estate, or

b If the dower or curtesy right or estate is inchoate, the interest shall go during the joint lives of husband and wife to the spouse of the person entitled to such estate. If the estate thereafter becomes consummate, the interest shall go as provided in paragraph "a"

Source R S 3 40-4, as am L 1949, c 223, p 706, §4,
L 1950, c 114, p 213, §8

3A:40-4. Cash settlement of dower or curtesy. Instead of directing a bond or a fund as provided by sections 3A 40-2 and 3 of this title, the court may direct the guardian of the person entitled to either an inchoate or consummate right or estate of dower or curtesy to accept such sum in gross as may be approved by the court as a just and reasonable satisfaction therefor

Source R S 3 40-5, as am L 1949, c 223, p 707, §5

3A:40-5. Restoration to competency; provisions for settlement. When a release, relinquishment or conveyance of an inchoate right or estate of curtesy or dower has been or shall be made in accordance with the provisions of this article,

and it shall thereafter appear to the satisfaction of the court that the person entitled to such right or estate so released, relinquished or conveyed, has been restored to his or her reason and is of sound mind and understanding, the court, upon the execution and filing with it of a release or relinquishment of the right or estate of such person, acknowledged in the manner prescribed by law for the record of deeds, may direct that any money or other property that may have been paid to the guardian of such person, or that may have been retained or set aside in any manner for the purpose of providing for the enjoyment by such person during his or her natural life of his or her curtesy or dower interest in real estate, be paid to the owner of the premises or to such persons as the court shall find entitled thereto

Source R S 3 40-7, as am L 1949, c 223, p 707, §7
L 1950, c 114, p 213, §9

3A:40-6. Failure of person restored to competency to execute a release; determination of gross sum to be paid. If a person restored to reason shall not execute the release or relinquishment provided by section 3A 40-5 of this title, the court may ascertain and determine a sum in gross to be paid to such person in satisfaction of his or her inchoate right or estate and may direct that the same be paid to him or her and that any and all other money or property that may have been paid to the guardian of such person, or have been retained to provide for the payment of such curtesy or dower right or estate, be paid to the persons thereto entitled as the court may ascertain and determine

Source R S 3 40-8, as am L 1949, c 223, p 708, §8

**Article 2 RELEASE OF DOWER OR CURTESY
IN THE ESTATE OF A PERSON UNDER
DISABILITY, SALE OF MORTGAGE
OF ESTATE**

3A:40-7. Satisfying dower or curtesy, or estate in lieu thereof out of proceeds of sale, mortgage or conveyance, or authorizing mortgage to raise sum. When it shall appear to the satisfaction of the superior court upon the complaint of the guardian of an infant or mental incompetent that the real estate of his ward is subject to a right or estate of dower or curtesy, or to an estate for life or years devised in lieu thereof, and that the person entitled to dower or curtesy, or other estate, consents to release said right or estate, and to accept in lieu thereof either a gross sum, or the investment of a reasonable sum in such manner that the interest thereon shall be payable to the person consenting thereto during the period for which his or her right or estate would by its own limitation continue, and that it is to the advantage of the ward that such gross sum be paid or investment made, the court may, after such consent has been filed with the clerk of the court and an effective release has been executed,

direct the payment of such sum in gross to, or the investment of a sum for, the person entitled in the money aforesaid

In order to raise said sum the court may order said sum taken out of the proceeds of the sale, mortgage or conveyance, or the court may authorize and order the guardian to borrow on

the security of a bond and mortgage on such real estate upon such terms as it may approve
Source. R S 3 40-10, L 1950, c 114, p 214, §10

3A:40-8

to

3A:40-11. Blank

Subtitle 7. ABSENTEES.

Chapter 41 to Chapter 43. Blank.

Subtitle 8. UNIFORM FIDUCIARIES LAW.

Chapter 44. UNIFORM FIDUCIARIES LAW.

Section

- 3A 44-1 Definitions
- 3A 44-2 Application of payments made to fiduciaries
- 3A 44-3 Registration of transfer of securities held by fiduciaries
- 3A 44-4. Transfer of negotiable instrument by fiduciary
- 3A 44-5 Check drawn by fiduciary payable to third person
- 3A 44-6 Check drawn by and payable to fiduciary

Section

- 3A 44-7 Deposit in name of fiduciary as such
- 3A 44-8 Deposit in name of principal
- 3A 44-9 Deposit in fiduciary's personal account
- 3A 44-10 Deposit in name of two or more trustees
- 3A 44-11 Subtitle not retroactive
- 3A 44-12 Cases not provided for in subtitle
- 3A 44-13 Uniformity of interpretation
- 3A 44-14 Short title

3A:44-1. Definitions. In this subtitle unless the context or subject-matter otherwise require "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking

"Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate

"Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest

"Principal" includes any person to whom a fiduciary as such owes an obligation

A thing is done "in good faith" within the meaning of this subtitle, when it is in fact done honestly, whether it be done negligently or not.
Source R S 3 44-1

3A:44-2. Application of payments made to fiduciaries. A person who in good faith pays or transfers to a fiduciary money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof for the fiduciary, and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid

in consequence of a misapplication by the fiduciary.

Source R S 3 44-2.

Note of Reporter. This section is identical with uniform fiduciaries act, §1, 9 Uniform Laws Annotated

3A:44-3. Registration of transfer of securities held by fiduciaries. If a fiduciary in whose name are registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, or of any trust, transfers the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or to see to the performance of the fiduciary obligations, and is liable for registering such transfer only where registration of the transfer is made with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or with knowledge of such facts that the action in registering the transfer amounts to bad faith

Source R S 3 44-3

Note of Reporter This section differs from §2 of the uniform fiduciaries act, 9 Uniform Laws Annotated, in that the word "for" is substituted for the word "by" in the phrase "the proper application thereof by the fiduciary" in the uniform act

3A:44-4. Transfer of negotiable instrument by fiduciary. In any negotiable instrument payable

or indorsed to a fiduciary, as such, is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument.

Source R S 3 44-4

Note of Reporter This section is identical with uniform fiduciaries act, §3, 9 Uniform Laws Annotated

3A:44-5. Check drawn by fiduciary payable to third person. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary, and delivered to the creditor in payment of or as security for a personal debt of the fiduciary in the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

Source R S 3 44-5

Note of Reporter This section is identical with uniform fiduciaries act, §4, 9 Uniform Laws Annotated

3A:44-6. Check drawn by and payable to fiduciary. If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the

fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith.

Source R S 3 44-6

Note of Reporter This section is identical with uniform fiduciaries act, §5, 9 Uniform Laws Annotated

3A:44-7. Deposit in name of fiduciary as such. If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with the actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of such facts that its action in paying the check amounts to bad faith. If however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

Source R S 3 44-7

Note of Reporter. This section is identical with uniform fiduciaries act, §6, 9 Uniform Laws Annotated

3A:44-8. Deposit in name of principal. If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

Source R S 3 44-8

Note of Reporter This section is identical with uniform fiduciaries act, §7, 9 Uniform Laws Annotated

3A:44-9. Deposit in fiduciary's personal account. If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal, if he is empowered to

draw thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

Source R S 3 44-9

Note of Reporter This section is identical with uniform fiduciaries act, §8, 9 Uniform Laws Annotated

3A:44-10. Deposit in names of 2 or more trustees. When a deposit is made in a bank in the name of 2 or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be

such that the action of the payee or other holder or the bank amounts to bad faith

Source R S 3 44-10

Note of Reporter This section is substantially identical with uniform fiduciaries act, §9, 9 Uniform Laws Annotated

3A:44-11. Subtitle not retroactive. The provisions of this subtitle shall not apply to transactions taking place prior to March 7, 1927

Source R S 3 44-11

Note of Reporter This section is identical with uniform fiduciaries act, §10, 9 Uniform Laws Annotated

3A:44-12. Cases not provided for in subtitle. In any case not provided for in this subtitle the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply

Source R S 3 44-12

Note of Reporter Section 11 of the uniform fiduciaries act, 9 Uniform Laws Annotated, provides that the act shall not apply to transactions taking place prior to the time when it takes effect

3A:44-13. Uniformity of interpretation. This subtitle shall be so interpreted and construed as to effectuate its general purpose to make uniform laws of those states which enact it

Source R S 3 44-13

Note of Reporter This section is identical with uniform fiduciaries act, §12, 9 Uniform Laws Annotated

3A:44-14. Short title. This subtitle may be cited as the "uniform fiduciaries law"

Source R S 3 44-14

Note of Reporter This section is identical with uniform fiduciaries act, §13, 9 Uniform Laws Annotated

Subtitle 9. TRUSTS.

Chapter 45. TRUSTS IN GENERAL.

Section

3A 45-1 Reserved interests alienable and subject to creditors' claims

3A:45-1. Reserved interests alienable and subject to creditors' claims. The right of any creator of a trust to receive either the income or the principal of the trust or any part of either thereof, presently or in the future, shall be freely alienable and shall be subject to the claims of his creditors, notwithstanding any provision to the contrary in the terms of the trust

Source L 1950, c 297, p 1002, §1

Section

3A 45-2 Application of act

3A 45-3 Partial invalidity

3A:45-2. Application of act. This chapter shall apply to all conveyances, transfers and assignments made and delivered on or after October 7, 1949.

Source L 1950, c 207, p 1002, §2

3A:45-3. Partial invalidity. If any provision of this chapter is held invalid, the other provisions of this act shall not be affected thereby

Source L 1950, c 297, p 1002, §3

PROPOSED REVISION

Title 4. AGRICULTURE AND DOMESTIC ANIMALS

4:1-23. Procedure to obtain search warrant. When allegation is made in writing and under oath before a judge of a county district court or a magistrate of a municipal court that the affiant has reason to believe, and does believe, that a provision of law which the department is charged with enforcing is being violated, the judge or magistrate, upon being fully satisfied that probable cause exists for such belief, shall issue a summons returnable in 3 days requiring the person to whom it is addressed to show cause why the affiant as agent of the department should not be permitted to enter and search, examine or inspect a building of any kind other than a human dwelling, or to enter upon any public or private lands or premises

If upon the return of the summons and the hearing thereon the judge or magistrate is satisfied that reasonable grounds exist, he shall thereupon issue a search warrant authorizing the affiant to enter and search as provided in this section

Source R S 4 1-23

4:3-10. Penalty for violation; recovery by action at law; courts having jurisdiction. Any person who shall violate any of the provisions of this article shall for the first offense be liable to a penalty not exceeding \$25 and for any subsequent offense to a penalty not exceeding \$50 Procedure for the recovery of such a penalty shall be in accordance with the rules of civil procedure governing the courts of this state

Jurisdiction to hear and determine actions instituted under this article is hereby conferred upon the district court and upon the municipal court, irrespective of any other act or statute otherwise limiting the jurisdiction of such courts

Source R S 4 3-10

4:3-18. Penalties; action to recover penalty; jurisdiction. Any person convicted of violating any of the provisions of this act shall for the first offense be liable to a penalty not exceeding \$25 and for any subsequent offense shall be liable to a penalty not exceeding \$50 An action for the recovery of a penalty for the violation of any of the provisions of this act shall be in accordance with the rules of civil procedure and governing the courts of this state and the same may be instituted and the penalty recovered either in the county district court or in the municipal court of any municipality. Jurisdiction to hear and determine actions instituted under this act is hereby conferred upon the county district court and upon the municipal court, irrespective of any

other act or statute otherwise limiting the jurisdiction of such courts

Source R S 4 3-18

4:7-14. Penalty for violation of article or orders. A person who shall violate any of the provisions of this article shall be subject to a penalty of \$50 for each sale, shipment or delivery in violation of this article or for each failure to obey the order or direction of the department made by authority of sections 4 7-8 and 4 7-9 of this title

Penalties shall be sued for and recovered by and in the name of the secretary of agriculture in the manner provided in article 1 of chapter 23 of this title (§4 23-1 et seq.), except that such proceedings may be had only in the county district court or the municipal court of any municipality.

Source R S 4 7-14

4:7-18. Penalty for failure to obey orders. A person who shall fail to obey an order of the department made and served as prescribed in section 4 7-17 of this title, within the time therein specified, shall be liable to a penalty of \$50 to be sued for and recovered by and in the name of the secretary of agriculture in the manner provided in article 1 of chapter 23 of this title (§4 23-1 et seq.) except that such proceeding may be had only in the county district court or the municipal court of any municipality

Source R S 4 7-18

4:7-24. Inspection as prerequisite to sales or shipments; penalty. No nurseryman within the state shall sell or offer for sale any nursery stock or shall deliver the same within the state until it has been inspected by the department and until a certificate has been issued to him in accordance with the provisions of section 4 7-22 of this title

For every sale or shipment to a point within this state in violation of this section, a nurseryman shall be liable to a penalty of \$50 to be sued for and recovered by and in the name of the secretary of agriculture in the manner provided in article 1 of chapter 23 of this title (§4 23-1 et seq.) except that such proceedings may be had only in any district court in any city or judicial district or before any municipal court or magistrate in any municipality

4:7-26. Misuse of certificate or noncompliance with conditions; penalty; cancellation. Any nurseryman to whom a certificate has been issued, who shall

a Use the same on stock not actually inspected; or

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b In any way fail to comply with the conditions upon which the certificate was issued or the requirements of sections 4 7-15 to 4 7-35 of this title—

Shall be liable to a penalty of \$100 for each offense, to be sued for and recovered by and in the name of the secretary of agriculture in the manner provided in article 1 of chapter 23 of this title (§4 23-1 et seq) except that such proceedings may be had only in the county district court or the municipal court of any municipality, and the certificate of such nurseryman may be canceled in the discretion of the department.

Source R S 4 7-26

4:7-33. Carriers to refuse transportation where certificate lacking; penalty. Every carrier for hire maintaining offices or stations within this state for the receipt of nursery stock for transportation to points within or without the state, and the agents and servants of every such carrier, shall determine, before accepting stock for transportation to points within or without the state, that the stock offered for shipment at any such office or station is properly provided with a certificate as required by sections 4 7-15 to 4 7-35 of this title, signed by authority of the department and valid by its terms at the date on which the shipment is offered

Every such carrier for hire and the agents and servants of every such carrier shall refuse for transportation in and delivery to points within this state, all boxes, bales, or parcels of nursery stock which are not accompanied by a certificate of inspection as required by section 4 7-30 of this title, but shipments of nursery stock from countries foreign to the United States, and bearing a certificate signed by a proper official of the country from which the stock was received, may be accepted at any port of entry within the state for transportation to points within or without the state

A certificate shall not be required for stock specifically excepted in section 4 7-28 of this title Nothing in this section shall prevent the delivery within this state of nursery stock bearing a proper certificate of inspection valid at the point where the shipment originated

For every violation of this section, and for every bale, box, parcel or package accepted or transported without such certificate, the carrier shall be liable to a penalty of \$50 00, to be sued for and recovered by and in the name of the secretary of agriculture in the manner provided in article 1 of chapter 23 of this title (§4 23-1 et seq) except that such proceedings may be had only in the county district court or the municipal court of any municipality

Source 4 7-33

4:7-41. Tenant to notify landlord; penalty. Every tenant in possession of lands and premises on whom the aforesaid notice is served by the department shall forthwith give notice thereof

to his landlord, or the agent of his landlord, and in default of so doing he shall be liable to any person aggrieved thereby to a penalty of \$50 00 to be recovered by a civil action in any court of competent jurisdiction in this state

4:7-42. Interference with officers; penalty. A person who shall interfere with the officers or agents of the department while they are engaged in the performance of any of the duties imposed by sections 4 7-36 to 4 7-41 of this title, shall be deemed a disorderly person, and shall be proceeded against under, and subject to the penalties provided in the disorderly persons act (§2A 201-1 et seq)

4:10-5. Use of outline of state on products; license; penalty. No person shall use the outline of this state on packages or devices containing farm products unless he is licensed by the secretary so to do

Upon application for such a license and upon being satisfied that any farm products to be sold by the applicant conform to official standards promulgated by the department, the secretary may issue a license in the name of the state, signed by himself, permitting the person to use the outline on any such package or device

The form of the application and the license shall be determined by the secretary

The license may be revoked by the secretary at any time for good cause shown after notice and an opportunity to be heard and subject to the right of appeal to the state board

A person who shall violate the provisions of this section shall be liable to a penalty of \$50 00 to be recovered in a civil action by and in the name of the secretary of agriculture, which penalty when recovered shall be paid into the state treasury

4:10-15. Jurisdiction of action to recover penalty. The action maintained in section 4 10-14 of this title to recover such penalty may be instituted and the penalty recovered either in the county district court or the municipal court of any municipality Jurisdiction to hear and determine actions instituted under this chapter is hereby conferred upon the county district court and upon the municipal court irrespective of any other act or statute otherwise limiting the jurisdiction of such courts

Source R S 4 10-15

4:11-10. Review of refusal or revocation of license. The action of the secretary in refusing to grant or in revoking a license shall be subject to judicial review by appeal to the superior court in accordance with the rules governing appeals from administrative agencies Whenever an appeal is taken to review the revocation of a license, the license shall be deemed to be in force until the final determination thereof, if the license fee has been paid

Source R S 4 11-10

4:11-27. Review of refusal or revocation of license. The action of the secretary in refusing to grant or in revoking a license shall be subject to judicial review by appeal to the superior court in accordance with the rules governing appeals from administrative agencies. When an appeal is taken to review the revocation of a license the license shall be deemed in full force and effect until the final determination thereof, if the license fee has been paid.

Source R S 4 11-27

4:11-47. Fines; jurisdiction; process; arrest.

Any person who violates any of the provisions of this act, upon being found guilty, shall pay a fine of not less than \$25 nor more than \$50 for the first offense, nor less than \$50 nor more than \$100 for the second offense, and not less than \$100 nor more than \$200 for the third or subsequent offense, if unable to forthwith pay any fine the violator shall be committed to the county jail for a period not exceeding 90 days. The procedure for the recovery of any fine shall be the same as the procedure specified in sections 51 1-103 to 51 1-108 of the Revised Statutes. Jurisdiction of all cases arising out of violations of this act is hereby conferred upon any county district court and upon all municipal courts located in the county where such violations are committed. In any proceeding, process shall be the same as that provided for in said sections 51 1-103 to 51 1-108, and any weights and measures officer shall have the power to arrest any violator without warrant where there is a violation within his view and conduct him to a court having jurisdiction in the municipality where the arrest is made or the violation committed.

Source C 4 11-47

4:12-18. Review of refusal or revocation of license. The action of the secretary in refusing to grant or in revoking a license shall be subject to judicial review by an appeal to the superior court in accordance with the rules governing appeals from administrative agencies. If an appeal is taken to review the revocation of a license, the license shall be deemed in full force and effect until the final determination thereof, if the license fee has been paid.

Source R S 4 12-18

4:12-41.20. Procedure to recover penalty; actions; jurisdiction. The procedure for the recovery of any penalty incurred under the provision of this act shall be the same as the procedure specified in sections 4 23-3 to 4 23-10 and 4 23-17 of the Revised Statutes. All actions shall be instituted in the name of the state of New Jersey by the director or any of his employees, agents or authorized representatives. Jurisdiction of all cases arising out of violations of the provisions of this act is hereby conferred upon the county district courts and upon the municipal courts of any municipality located in the county in which such violations are com-

mitted, irrespective of any other act or statute otherwise limiting the jurisdiction of such courts.
Source C 4 12-41 20

4:12A-12. Appeal; bond. Any person, applicant or licensee aggrieved by any order or determination of the board made pursuant to this act shall be entitled to a judicial review thereof by filing an appeal in the superior court in accordance with the rules governing appeals from administrative agencies, and said court may, in its discretion, require the appellant to execute a bond not exceeding in amount the costs or money involved, payable to the state of New Jersey, as the court may prescribe, with sureties to said court, conditioned for the prompt payment by the appellant of all costs and damages arising from or caused by the delay in the effectiveness or enforcement of the order or determination complained of.

Source C 4 12A-12

4:12A-16. Refusal to obey subpoena or testify before directors; contempt; perjury. In case any person so summoned by subpoena issued by said director shall refuse to obey such subpoena or any directions therein, or to give testimony, or to answer questions as required, or to produce any books, papers, documents or records as required, the director may apply to the superior court to hold such person in contempt in accordance with the rules of that court, and upon the hearing the court may enforce, by imprisonment in any county jail, obedience to such subpoena, and require the answer to any questions that may be proper, and the production of any book, paper or document that the witness would be compelled to produce in a court of law, by similar process, and also may compel such witness to pay a fine and the costs of said proceedings, to be taxed by the court, and any person who shall willfully and corruptly testify falsely to any material matter upon oath or affirmation administered by the director or any person authorized by law, at any investigation, inquiry or hearing shall be guilty of perjury.

Source C 4 12A-16

4:12A-41. Process; issuance for violations of act; summary hearing by court. Every county district court is hereby empowered upon the institution of a civil action against any person who has violated any of the provisions of this act, to issue process at the suit of the director of milk control as plaintiff, such process shall be in the nature of a summons and shall be returnable in not less than 5 nor more than 15 days, such process shall state what provisions of the law and orders and rules and regulations are alleged to have been violated by the defendant or defendants, and on the return of such process or at any time to which the trial shall be adjourned, the said court shall proceed in a summary manner, without a jury, to hear testimony and to determine and give judgment in the matter without the filing of any pleadings, either

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ror the plaintiff, for the recovery of such penalty, with costs, or for the defendant, and the said court shall, if judgment be rendered for the plaintiff, cause any such defendant, who may refuse or neglect to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for any period not exceeding 100 days, that the officers to serve and execute all process under this act shall be the officers authorized to serve and execute process in said court.

Source C 4 12A-41

Note of Reporter. A rule and official form should be drawn to cover this section

4:12A-44. Injunction suit to prohibit violations.

The director may file an action in the superior court, in the name of the state, on the relation of said director, for an injunction to prohibit any habitual violation of the act or any of the orders or rules or regulations issued by said director or any other violation of any of the provisions of this act.

Source C 2 12A-44

4:12A-49. Declaration of legislative intent; injunction. It is the intent of the legislature that the instant, whenever that may be, that the handling within the state, by a milk dealer, of milk produced outside of the state, becomes a subject of regulation by the state, in the exercise of its police powers, the restrictions set forth in this act respecting such milk so produced shall apply and the powers conferred by this act on the director shall attach. After any such milk so produced shall have come to rest within the state, any sale, within the state, by a licensed milk dealer, processor, subdealer or store or a milk dealer required by this act to be licensed, of any such milk purchased from the producer at a price lower than that required to be paid for milk produced within the state, purchased under similar conditions, shall be unlawful and deemed a violation of this act, and for continued violations the director may apply to the superior court, chancery division, for an injunction to restrain such further unlawful acts

Source C 4 12A-49

4:15-4. Appointment and qualification of special officers. The directors of an association, or a majority of them, may appoint from time to time, as many fit persons as they may deem proper as special police officers. Each such officer, before entering upon his duties, shall take or prescribe an oath before a person qualified to administer oaths in this state that he will well and truly serve the state, and will perform all his duties to the best of his knowledge and ability. The oath shall be filed forthwith in the office of the county clerk who shall indorse thereon the date of filing and shall be paid the sum of 25 cents for each oath so filed.

Source R S 4 15-4

4:17-2. Trespassing after being forbidden by notice or otherwise; fine. A person who shall trespass upon the cultivated lands of another within this state after being forbidden so to do by the owner, occupant, lessee or licensee thereof, or after public notice given as provided in this section on the part of the owner, occupant, lessee or licensee of the lands forbidding such trespass, shall be fined not more than \$20 and costs, and the municipal court of any municipality shall have jurisdiction to try such offenders and pronounce sentence as provided in this article

The notice shall bear the name of the owner, occupant, lessee or licensee of the lands, and be posted conspicuously on the corners of the property or along the roads or highways abutting the property, on all boundary lines bordering on adjoining lands and at each point where a stream enters upon or leaves the property

Source R S 4 17-2

4:17-3. Arrest of offenders without warrant.

A person who shall violate any of the provisions of this article may be arrested without warrant by the owner, occupant, lessee or licensee, or an officer of the law and taken for trial before a municipal court as provided in section 4 17-2 of this title

Source R S 4 17-3

4:17-6. Gathering of cranberries between certain dates by other than owner of land; penalty.

A person who shall, at any time after June 1st and before October 5th, gather cranberries from the vines on the common or unlocated lands within this state, or any lands not his own property, or for which he pays no taxes, shall be liable to a penalty of \$6 for every such offense and the further sum of \$4 for every bushel so taken or gathered

The penalty shall be sued for and recovered, with costs, in a civil action, and shall be applied one-half to the use of the person who shall sue for it, and the other half to the use of the county where the offense was committed if on the common or unlocated lands or to the owner or possessor if on any of the located lands.

4:17-10. Injuring, destroying or removing trees, saplings or poles; penalty. A person who shall cut, fell, work up, carry away, box, bore or destroy any tree, sapling or pole, standing or lying on any land within this state to which he has no right and title, without leave first obtained of the owner of the land for that purpose, shall forfeit and pay the sum of \$8 for each tree, sapling or pole so cut, felled, worked up, carried away, boxed, bored or destroyed. One-half of such sum shall go to the owner or owners of the land and the other half to the person or persons suing for and prosecuting the same to effect, at any time within 18 months from the commission of the acts complained of.

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When any person, within this state, shall be sued or prosecuted in a municipal court, the magistrate may proceed whenever the penalty demanded shall not exceed \$100, notwithstanding any claim the defendant may offer or make to the land whereon and from which the tree, sapling or pole may be cut, felled, worked up, boxed, bored, destroyed or carried away, and issue execution for the same, with costs of action, unless the defendant shall immediately enter into bond to the plaintiff, with 1 or more sufficient sureties or surety, being freeholders, in double the sum so demanded, with a sufficiency for costs of action, conditioned for his appearance at the next court where the same may be cognizable, in a civil action, and to pay damages found against him, with costs of action, any law, usage, or custom to the contrary notwithstanding

Source R S 4 17-10

4:19-3. Refusal to report number and age of dogs; penalty. An inhabitant who shall refuse or willfully neglect to deliver to the assessor, when required by him, a true account of the number and age of the dogs made taxable under this article which are owned or harbored by him shall, for every such failure, be liable to a penalty of \$5, to be recovered with costs by the collector of the taxing district in a civil action, the amount of the penalty recovered to be for the use of the taxing district

4:19-7. Effect of article on owner's liability. This article shall not exempt the owner, possessor or harbinger of a dog from liability for damage done by it but he is hereby declared to be responsible for such injury. A civil action may be brought by a person for the full amount of the damages sustained by him and in such action it shall not be necessary to prove that the dog was accustomed to commit the injury complained of or a similar injury

The presentation of a claim for damages to the governing body of a municipality shall constitute a waiver of all claims against the owner

4:19-8. Failure to kill dog found worrying animals or poultry; penalty; triple damages. An owner or person harboring a dog which is found killing, worrying or wounding any sheep, lamb, domestic animal or poultry, who shall, after being informed thereof, fail to kill the dog within 24 hours after receiving such information, shall be liable, to any person who shall sue for the same, to a penalty of \$10, to be recovered with costs by action at law in any county district court or any municipal court, and shall also pay triple damages for any injury done

Source R S 4 19-8

4:19-15.21. Process; issuance; jurisdiction; form; contents; amendment; service. Every county district court and municipal court is empowered upon the institution of a civil action

by any person authorized by the director of health of the state of New Jersey, when the plaintiff is the director of health, or by any person authorized by the local board of health, when the plaintiff is the local board of health, or by the chief of police of the municipality or by the chairman of the police committee, if the office of chief of police does not exist, or by any person appointed for the purpose by the governing body of the municipality, when the plaintiff is the municipality, alleging that a violation of section 2, 4, 6, 7, 8, 10 or 18 of this act or of a rule or regulation promulgated pursuant to section 14 of this act has occurred, which action may be instituted upon information and belief, to issue process at the suit of the director of health of the state of New Jersey or of the local board of health, or of the municipality, as the case may be, as plaintiff. The process shall state what provision of the law or rules and regulations is alleged to have been violated by the defendant or defendants

Any officer authorized by law to serve and execute process in the court in which the proceeding is brought shall serve and execute all process in proceedings for violations of any of the provisions of this act

Source C 4 19-15 21

4:19-15.24. Adjournment of hearing; detaining defendant in safe custody bond; forfeiture. The court may adjourn the hearing from time to time but, unless the first process was a summons, shall detain the defendant in safe custody unless he shall enter into bond to the director of health of the state of New Jersey or the local board of health or municipality with at least 1 sufficient surety in double the amount of the penalty claimed, conditioned for his appearance on the day to which the hearing shall be adjourned and thence from day to day until the case is disposed of, and to abide by the judgment of the court. Such bond if forfeited may be prosecuted by the director of health of the state of New Jersey, the local board of health or municipality

Source C 4 19-15 24

Note of Reporter This should be included in a general official form covering this and similar acts

4:20-8. Failure to make and maintain portion of partition fence. When a person after due notice shall fail to make or amend and maintain his part or proportion of a partition fence as required by section 4 20-7 of this title, the other person may make or amend and maintain the same wholly, in which event he shall be entitled to receive from the person so failing one-half of the expenses thereof, as appraised and certified in writing by 2 disinterested members of the township committee where the lands lie, together with the legal fees of such committee for their services as ascertained in writing. Upon nonpayment by the delinquent person of the

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sum so found and the fees certified to be due, the other person may recover such sums, with costs of suit, in a civil action in any court of competent jurisdiction

4:20-21. Failure of clerk to register; penalty. A township clerk who shall fail to enter or register an agreement or certificate such as is referred to in section 4 20-19 of this title, within 2 weeks after it is made and delivered to him with a tender of the fees, shall forfeit \$5 to be recovered, with costs of action, in a civil action by any person who shall sue for it

4:20-25. Molestation of gate in partition fence; penalty; damages and impounding of animals. A person who shall stake, shore or leave open or insecure, or cut, break, pull down or destroy or in any way leave a gate, erected as a part of a partition fence as authorized in section 4 20-24 of this title, so that the horses or cattle of the owner of the adjoining lands may pass through it, shall, for every such offense, be liable to a penalty of \$5, to be recovered with costs by action at law by any person who shall sue for it

The offender shall also pay to the owner or tenant of the lands trespassed upon all damages which he or they may have sustained thereby, to be appraised as provided in section 4 20-22 of this title, which damages shall be recovered by civil action

The owner of the trespassing horses, cattle or sheep shall be entitled to protection from injury to such animals as provided in section 4 20-28 of this title, and shall not be liable to have his animals impounded, or be liable to an action for damages accruing thereby

4:20-32. Violations of sections 4:20-30 and 4:20-31; penalty; damages. Any person who shall offend against the provisions of sections 4 20-30 and 4 20-31 of this title, or shall willfully injure, dig up, or otherwise deface or destroy any hedge sets, hedges or fence erected for their protection, shall for each offense be liable to a penalty of \$30, to be recovered, with costs, in a court of competent jurisdiction, in a civil action by and in the name of the person injured, and in addition thereto shall be liable for all damages to the person injured

4:21-3. Interference with impounding of animals; penalty. A person, having charge of horses, cattle, sheep or swine found running at large in the streets or highways or trespassing upon the improved lands of another, who shall attempt to hinder or take away such animals from a person taking or driving or attempting to take or drive them to the pound, or a person who shall unlawfully drive from a public pound in the township horses, cattle, sheep or swine which are therein impounded, shall be liable to a penalty of \$15 to be recovered in a civil action

in a court of competent jurisdiction by and for the use of any person prosecuting the suit

4:21-9. Detention of swine and appraisal of damages; double damages. A person as provided in section 4 21-8 of this title who shall find swine trespassing upon his land, whether inclosed or not, for which he pays taxes, and who shall not choose to kill such swine as authorized by said section 4 21-8, may take and put such swine into his yard or other inclosure. He shall give notice to the owner, if easily to be found, who shall pay double damages to the person injured, to be appraised and certified in writing by 2 reputable freeholders to be chosen by the parties. If the owner of the swine shall fail, for 24 hours after notice, to choose 1 of the appraisers, or if he cannot easily be found, the person injured may choose them both

If the appraisers cannot agree they may choose a third person to join them, in which event an appraisement made by agreement of any 2 of them and certified as provided in this section, shall be binding and conclusive, and double the sum so appraised may be recovered by civil action in any court of competent jurisdiction

4:22-25. Use of dog for drawing vehicle; fine. A person who shall use a dog for the purpose of drawing or helping to draw a vehicle for business or other purposes shall be liable to a fine of \$1 and costs for the first offense and \$10 and costs for each subsequent offense

The offender together with the dog and the vehicle shall be taken before a district court, municipal court or magistrate, who, upon being satisfied of the guilt of the person shall impose the fine

The fine as soon as imposed shall have the force and effect of a judgment and execution may be issued thereon immediately and the articles so seized, levied upon and sold to pay and satisfy the fine together with costs

4:22-28. Effect of indictment on liability to penalty for fighting or baiting of animals. The indictment of a person under the provisions of this article, or the holding of a person to bail to await the action of a grand jury or county court of a county, shall not in any way relieve him from his liability to be sued for the penalty prescribed in paragraphs "e", "f" and "g" of section 4 22-26 of this title

Source R S 4 22-28

4:22-29. Jurisdiction of action for penalty. The action for the penalty prescribed in section 4 22-26 or 4 22-27 of this title shall be brought:

a In a criminal judicial district court of the county where the defendant resides or in which the offense was committed, or

b If there is no such court, in the municipal court of the municipality wherein the defendant resides or where the offense was committed,

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c Where the offense was committed in a municipality having no municipal court or district court therein, in a municipal court or county district court within the county where the offense was committed.

Source R S 4 22-29

4:22-30. Filing affidavit of violation. In all proceedings instituted under the provisions of sections 4 22-26 and 4 22-27 of this title, an affidavit of the violation thereof shall be a sufficient demand or pleading, which affidavit shall be filed with the court before issuing the process

Source. R S 4 22-30

4:22-31. Procedure on plea of guilty. A person against whom proceedings have been or are about to be begun as provided in this article, for the penalty prescribed in section 4 22-25, 4 22-26 or 4 22-27 of this title, may appear before the court and if such person shall so request and shall then and there plead guilty to a violation of the provisions of the section, the court may immediately impose a penalty as provided in this article, which penalty together with the costs of the proceedings, if any, shall be then and there paid, and the proceedings shall thereupon determine, and the court shall so enter in its docket. If the penalty so imposed is not paid, the proceedings shall continue to judgment, and execution shall issue as provided in this article.

Source R S 4 22-31

4:22-32. Procedure by summons, warrant, attachment or summary arrest. The court having jurisdiction of an offense as provided in section 4.22-29 of this title, shall, upon receiving sufficient proof by affidavit of the offense and of any of the following particulars, proceed as follows

a By summons When the defendant is resident within the jurisdiction of the court

b By warrant When the defendant is temporarily within the jurisdiction of the court, but not residing therein, or when the defendant is likely to evade judgment by removal therefrom; or when his name and residence is unknown

c By attachment When the court is satisfied by affidavit that the owner of an animal which has been or is being cruelly treated is the person chargeable with the offense, and that he resides out of the jurisdiction of the court, the court shall order and enforce the same by summary attachment against the animal and the vehicle to which the animal is or may be fastened, yoked or hitched at the time of the offense, together with the appurtenances

d By summary arrest Where a person is arrested without a warrant for violating any of the provisions of this article as authorized in section 4.22-44 or 4 22-47 of this title, the procedure shall be as provided in section 4 22-42 of this title

Source R S 4 22-32

4:22-33. Security for appearance where defendant nonresident or desires continuance. Where

a defendant is a nonresident of the county in which the alleged offense was committed, or where a defendant desires an adjournment or continuance of the hearing, the court may in its discretion require the defendant to furnish security in an amount not exceeding \$250 for his appearance at the hearing.

Source R S 4 22-33

4:22-36. Form of order when action instituted by warrant. When the action is instituted by warrant, the court shall cause the following order to be indorsed on the affidavit filed in the cause, and shall affix its name thereto

Having read the within affidavit, and being satisfied as to the sufficiency of the same, I do hereby order and adjudge that a warrant (or warrants, as the case may be) do issue against the defendant (or defendants, as the case may be) therein named

Source R S 4 22-36

4:22-37. Form of order when action instituted by attachment. When the action is instituted by attachment, as provided for in this article, the court shall cause the following order to be indorsed on the affidavit filed in the cause, and the judge shall affix his name thereto

Having read the within affidavit, and being satisfied as to the sufficiency of the same, I do hereby order and adjudge that a writ of attachment do issue and be enforced against said animal (or animals, as the case may be), so cruelly treated as aforesaid, and the vehicle to which the animal (or animals, as the case may be) was fastened, yoked or hitched at the time of said offense, together with the appurtenances

Source R S 4 22-37

4:22-38. Proceedings on attachment. Proceedings on attachment shall be the same as far as practicable as in other actions of attachment in a county district court

Source R S 4 22-38

4:22-39. Determination of penalty; judgment; execution. The amount of the penalty to be recovered as provided in this article shall be determined and judgment rendered for the same, together with costs, in like manner as in actions for the recovery of money or damages in the county district court, and all proceedings mentioned in this article shall, except as otherwise specially provided, conform to the course and the practice of the court before which the proceeding is instituted

Source R S 4 22-39

Note of Reporter This apparently is unnecessary

4:22-41. Appeal to county court. An appeal from the judgment of the court may be taken to the county court.

Source R S 4 22-41

4:22-42. Procedure to impose penalty where arrest is without warrant. When a person is arrested without a warrant as authorized in section 4 22-44 or 4 22-47 of this title, he shall

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be taken before the nearest district or municipal court, which court, upon complaint being made and warrant issued, returnable immediately, the person being in custody, and upon being satisfied as to the guilt of such person, may adjudge that such person pay a penalty in such sum, not to exceed the penalty provided in this article, as the court shall determine, and the person so arrested shall be imprisoned and kept in custody until such amount and costs, if any, are paid.

Source R S 4 22-42

4:22-44. Arrests with or without warrant. Any member, officer or agent of the New Jersey Society for the Prevention of Cruelty to Animals, or any sheriff, undersheriff, constable or police officer may

a Make arrests for violations of this article,

b Arrest without warrant any person found violating the provisions of this article in the presence of such member, officer, agent, sheriff, undersheriff, constable or police officer, and take such person before the nearest district or municipal court to be proceeded against as provided in section 4 22-42 of this title

Source R S 4 22-44

4:22-46. Search warrants; issuance; time of search. When complaint is made under oath before a magistrate of a municipal court that the complainant believes, and has reasonable cause to believe, that the law in relation to cruelty to animals has been or is being violated in a particular building or place, the magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing a sheriff, undersheriff, constable, police officer or agent of the New Jersey Society for the Prevention of Cruelty to Animals to enter and search such building or place

No such search shall be made at any time between the hours of 6 o'clock in the afternoon and 6 o'clock in the morning, unless specially authorized by the magistrate of the municipal court upon satisfactory cause shown, but any such officer or agent may at any time enter a building or place as authorized in section 4 22-47 of this title.

Source R S 4 22-46

4:22-48. Forfeiture of creatures and articles seized under section 4:22-47. The person seizing animals, creatures, implements or appliances as authorized in section 4 22-47 of this title, shall, within 24 hours thereafter, apply to a county district court or a municipal court to have the same forfeited and sold

The application shall be in writing, and shall specify the articles seized, the place where they were seized and the reason for the seizure. The court shall thereupon cause a notice to be published in a newspaper circulating in the neighborhood where the seizure was made, for at least 3 times if in a daily paper or 1 time if in a weekly paper, stating that a seizure has been

made, the names of the articles seized, the place where they were seized and the reason for the seizure, and appointing a time and place, not less than 5 nor more than 10 days from the date of the seizure, when and where all persons may be heard and show cause why the application should be denied

If, upon the hearing of the application, it is found and adjudged that at the time of the seizure the animals, creatures, implements or appliances were engaged or used in violation of section 4 22-47 or paragraphs "e", "f" and "g" of section 4 22-26 of this title, or were owned, possessed or kept with the intent that they should be so engaged or used, they shall be adjudged forfeited, and the court shall order the same sold in such manner as he shall deem proper, and after deducting the costs and expenses, shall dispose of the proceeds as provided in section 4 22-55 of this title

A bird or animal found or adjudged to be of no use or value may be liberated or disposed of as directed by the court

A creature or property which is adjudged not forfeited shall be returned to the owner, and the person making the seizure shall pay all costs and expenses thereof

Source R S 4 22-48

4:22-49. Fees under section 4:22-48. The court for its services under section 4 22-48 of this title, shall be allowed the following and no other fees

For drawing the application, per folio, 15 cents,

For drawing the notice, per folio, 15 cents;

For printing, the fees now allowed by law to printers, to be paid to the printer by the court,

For the hearing, \$1 00,

For swearing each person, 25 cents,

For making order in regard to forfeiture and sale, or other disposition of the articles, 50 cents;

And such other fees as are now allowed by law; and in addition the court shall pay all expenses of the custody of the articles and retain the same out of the proceeds of sale; or in case of no sale, cause the same to be paid by the person making the seizure

Source R S 4 22-49

4:22-53. Sale of animals abandoned in disabled condition. An animal or creature abandoned in a maimed, sick, infirm or disabled condition, if fit for further use, may be advertised and sold in the manner directed by a judge, magistrate or agent of the New Jersey Society for the Prevention of Cruelty to Animals

The proceeds, after deducting expenses, shall be paid to the district (county) society for the prevention of cruelty to animals, if one is in existence in the county, if not, then to the New Jersey society.

4:22-55. Disposition of fines, penalties and moneys imposed and collected. All fines, penalties and moneys imposed and collected under

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the provisions of this article, shall be paid by the clerk of the court or court officer receiving the same, within 30 days and without demand, to the district (county) society for the prevention of cruelty to animals of the county where the same were imposed and collected, if one is in existence in that county, and if not, then to the New Jersey Society for the Prevention of Cruelty to Animals, to be used by the society in aid of the benevolent objects for which it was incorporated

Source R S 4 22-55

4:23-1. Jurisdiction. Jurisdiction of proceedings to collect penalties collectible under the provisions of this title is vested in all county district courts and in all county courts in the respective counties and in all other courts or officers specifically authorized by the law under which the proceeding is had.

Source R S 4 23-2

4:23-2

to

4:23-10. Blank

4:23-11. Penalties to which article applies. The penalties hereinafter enumerated in this section shall be collected in conformity with this article

a For violation of or failure to comply with orders of the state board of agriculture, or its duly constituted agent, made pursuant to sections 4 5-1 and 4 5-2 of this title and imposed by section 4 5-3 of this title,

b For violations of section 4 5-16 of this title and imposed by section 4 5-17 of this title,

c For violations of any of the provisions of sections 4 5-18 to 4 5-74 of this title and imposed by section 4 5-75 of this title,

d For violations of any of the provisions of sections 4 5-94 to 4 5-105 of this title and imposed by section 4 5-106 of this title,

e For violations of or failure to comply with orders of the state board of agriculture, or its constituted agent, made pursuant to sections 4 7-1 and 4 7-2 of this title, and imposed by section 4 7-3 of this title,

f For violations of the provisions of any law whenever such law shall provide that the penalties imposed thereby shall be sued for in the manner provided by this article

Source R S 4 23-11, as am L 1946, c 256, p 892, §1

4:23-12. Jurisdiction. Jurisdiction of proceedings to collect penalties collectible under the provisions of this article is vested in all county district courts and in all municipal courts in any municipality where the defendant may be apprehended or where he may reside, and in all other courts or officers specifically authorized by law under which the proceeding is had, all of which courts and officers are hereinafter in this article designated as the "court".

Source R S 4 23-12

4:23-13. Process. The summons or warrant is-

sued under this article in a proceeding to collect a penalty shall be directed to any constable, police officer or member of the state constabulary

Source R S 4 23-13

4:23-14. Failure to pay penalty; commitment.

If any person fails to pay the penalty imposed, together with all costs, the court shall commit him to the common jail of the county wherein such conviction is had for a period not exceeding 90 days or until the penalty and costs are paid.

Source R S 4 23-14

4:23-15. Arrest without warrant for violation in view of officer. For a violation of any provision prescribing a penalty collectible under this article, where the violation takes place within the view of any constable, police officer or member of the state constabulary, the officer may arrest the offender without a warrant

Source R S 4 23-15

4:24-28. Nonobservance of regulations by landowner; civil action; performance of work by supervisors. Where the supervisors of any district shall find that any of the provisions of land-use regulations adopted in accordance with the provisions of article 7 of this chapter (§4 24-23 et seq) are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may institute a civil action in the superior court asking the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the owner of such land. The procedure in the action instituted under this section shall be in accordance with the rules of civil practice relating to summary actions in the superior court

In its order upon the hearing and determination of the act, the court may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of 5% per annum, from the owner of such lands

Source R S 4 24-28

Note of Reporter A rule should be drawn to cover the required contents of the complaint under this section

4:24-29. Order to assess cost of work against delinquent landowner. The court shall retain

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jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court, the supervisors may apply to the court for an order assessing the costs and expenses sustained by them in the performance of the work against the defendant

Source R S 4 24-29

4:24-33. Review of order of board. Any petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought of the supervisors of the district, or any intervening party, may obtain a judicial review of such order by filing an appeal in the superior court in accordance with the rules governing appeals from administrative agencies.

Source R S 4 24-33

PROPOSED REVISION

Title 5. AMUSEMENTS, PUBLIC EXHIBITIONS AND MEETINGS

5:3-29. Penalties; recovery; disposition. The commissioner of labor may bring a civil action for the recovery of any such penalty in the district court or county court in any county. All penalties so recovered shall be paid to said commissioner and by him paid into the state treasury

5:4-5. Penalty for violation of chapter. Any person violating any of the provisions of this chapter shall upon conviction thereof in a summary proceeding before any municipal court or magistrate of this state, be sentenced to pay a fine not exceeding \$100 for each such offense, for the use of the state

5:5-31. Removal of commissioner; hearing; oaths; witnesses; subpoenas; misconduct, failure to attend or produce records; witness fees; perjury; depositions; findings; review by certiorari. The governor may remove any commissioner for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense, upon not less than 14 days' notice either by personal service or registered mail

The governor shall have power to administer oaths and examine witnesses, and shall have the power to issue subpoenas to compel the attendance of witnesses and the production of all necessary reports, books, papers, documents, correspondence and other evidence at any designated place of hearing. The subpoenas shall be authenticated by the seal of the governor, and any party to a proceeding before the governor may secure from him subpoenas without charge. Misconduct on the part of a person attending a hearing or the failure of a witness when duly subpoenaed to attend, give testimony or produce any records, shall be punishable by the county court of the county wherein the offense is committed in the same manner as such failure is punishable by that court in a case therein pending. The governor shall certify such misconduct, failure to attend or produce records to such county court

The fees for the attendance of witnesses shall be the same as for the attendance of witnesses in other civil cases

A person who, having been sworn or affirmed as a witness in any such proceeding, shall willfully give false testimony, shall be guilty of perjury

The governor, or any applicant, may in connection with any hearing before the governor cause the deposition of witnesses within or without the state to be taken on oral or written interrogatories in the manner prescribed by statute for depositions in suits at law in the courts of record in this state

At the conclusion of such hearing, the governor shall, within 30 days, make his findings

If such commissioner shall be removed, the governor shall file in the office of the secretary of state a complete statement of all charges made against such commissioner and his findings thereof, together with a complete record of the proceedings, and shall give notice of his findings to such commissioner forthwith

The action of the governor and the propriety thereof shall be subject to review by any court of competent jurisdiction in the state of New Jersey pursuant to the rules of the supreme court, provided, that application therefor is made within 15 days after service of notice of the governor's findings upon such commissioner. L 1940, c 17, p 73, §11

Effective March 18, 1940

5:5-54. Oaths and witnesses; subpoenas; misconduct, failure to attend or produce records. Each member of the commission shall have power to administer oaths and examine witnesses, and shall have the power to issue subpoenas to compel the attendance of witnesses and the production of all necessary reports, books, papers, documents, correspondence and other evidence at any designated place of hearing. The subpoenas shall be authenticated by the seal of the commission, and any party to a proceeding before the commission may secure from it subpoenas without charge. Misconduct on the part of a person attending a hearing or the failure of

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a witness when duly subpoenaed to attend, give testimony or produce any records, shall be punishable by the county court of the county wherein the offense is committed in the same manner as such failure is punishable by that court in a case therein pending. The commission shall certify such misconduct, failure to attend or produce records to such county court. L. 1940, c. 17, p. 83, §34.

5:5-60. Judicial review. The action of the commission and the propriety thereof shall be subject to judicial review by appeal to the appellate division of the superior court in accordance with the rules governing appeals from administrative agencies

Source C 5 5-60

PROPOSED REVISION

Title 6. AVIATION

6:1-53. Judicial review. Any order made by the commission may be judicially reviewed by appeal to the appellate division of the superior court in accordance with the rules governing appeals from administrative agencies

Source. R S 6 1-53

6:1-54. Stay of orders. The taking of an appeal to review any order of the commission shall not supersede or stay the order of the commission unless the appellate division or judge thereof shall so direct upon application being duly made. The appellant may be required by said court to give bond in such form and amount as said court shall require. No stay shall be granted unless the appeal to review the order is taken within 10 days of the service thereof and application for the stay is made within said time.

Source R S 6 1-54

6:1-55. Omit

6:1-56. Setting aside orders. The appellate division may set aside the order in whole or in part when it clearly appears that there was no

evidence before the commission to support the same reasonably, or that the same was without jurisdiction of the commission

No order shall be set aside in whole or in part for any irregularity or informality in the proceedings of the commission unless the irregularity or informality tends to defeat or impair a substantial right or interest of the appellant

Source R S 6 1-56

6:1-57. Ordering a rehearing. If, with respect to any order under review by appeal, it shall appear equitable and just that a rehearing should be had before the commission, the reviewing court may order that a rehearing be had before the commission upon such terms and conditions as are reasonable. The commission shall thereupon proceed to a rehearing of the evidence upon which the order under review was based, and upon such additional evidence, if any, as may be produced

As a result of the rehearing the commission may readopt the order or alter, amend, modify or extend it

Source R S 6 1-57

PROPOSED REVISION

Title 8. CEMETERIES

8:2-29. Sequestration of revenues of cemetery association; receiver. The rents, issues, profits, income and revenues derived from any and all lands lying within the bounds of any cemetery or burial ground belonging to, used by or held in trust for any incorporated cemetery association, may be taken and sequestered under and by virtue of the orders and judgments of the superior court, according to the rules of that court, and applied by that court to the payment of any judgment recovered in any of the courts of this state against the cemetery association owning or using such lands, and the superior court may appoint a receiver of such rents, is-

ues, profits, income and revenues, and make such order regarding the same as may be just and equitable

This section shall not be construed to make such lands liable to seizure, taking or sale by virtue of any judgment, order, execution or other process made, rendered by or issued out of any court in this state

Source R S 8 2-29

8:3-7. Taking dog or goat into graveyard; forfeiture; civil liability. Any person taking a dog or goat within the limits of any graveyard or burial plot or lot owned by an individual or

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unincorporated association shall for every* such offense, upon conviction thereof in a municipal court of the municipality wherein the offense is committed, forfeit and pay \$2 00 for the use of the poor of the township.

Such person shall also be liable as a trespasser for all damages committed by the dog or goat, recoverable in an action at law in the nature of an action of trespass in a court of competent jurisdiction by the owner of the graveyard or burial plot or lot

Source R S 8 3-7

8:3-11. Civil action when consents not obtainable. If the consents required by section 8 3-10 of this title cannot be obtained because the persons from whom they are required to be obtained cannot, upon diligent inquiry, be found, the corporation or society may institute a civil action in the county court of the county wherein the lands sought to be sold are located for the sale thereof.

Source. R S 8 3-11

8:3-12. Order and notice to show cause against sale.

Source R S 8 3-12

Note of Reporter. This section is procedural and should be covered by rule of court

8:3-13. Court order for removal of bodies and the sale of lands. If no objections in writing are made thereto or filed with such county court by the lineal descendants or widow or widower of the persons buried in such lands, such court may make an order authorizing the sale of the lands and the removal of any bodies buried therein.

Source R S 8 3-13

8:3-14. Removal of bodies to another part of burial ground; court order. When burials have been made in lands owned by a religious corporation or society, the county court of the county wherein such lands are located may make an order authorizing the corporation or society to remove the bodies buried therein to another part of the lands owned by it. The procedure governing the making of such order shall be the same as that prescribed in sections 8 3-11 and 8 3-13 of this title

Source R S 8 3-14

8:3-16. Protection of owners of burial rights on sale of lands of religious society. If any religious corporation or society sells any land in which any person has acquired a right of burial, the corporation or society shall, at the discretion of the county court of the county in which its lands are situate, either refund to the party having such right, their heirs, executors or assigns, the amount paid therefor, with interest from the date of payment, or shall convey to such party, their heirs, executors or assigns, an eligible plot of ground of equal size in burial grounds adjacent thereto, and shall pay all cost and expense incurred in the removal of any bodies interred in the lands sought to be vacated and sold and the cost of properly reintering the same.

Source. R S. 8.3-16.

8:1-20.1. Selection by court of chancery until bonds or notes given by receiver are paid. Whenever any receiver or trustee of any cemetery, cemetery company or cemetery association heretofore or hereafter appointed by the superior court of this state shall have adjusted, compromised or settled, or may hereafter adjust, compromise or settle any debt or claim due or owing, or to become due or owing by such cemetery, cemetery company or cemetery association, and in connection therewith gives under the authority of such court in his name as such receiver or trustee, or in the name of such cemetery, cemetery company or cemetery association, any bonds, notes, or other evidences of indebtedness in payment of or as a means of payment of such debt or claim, the board of managers or trustees of such cemetery, cemetery company or cemetery association and who are to have the care and management of such cemetery, cemetery company or cemetery association, shall until such notes, bonds, or other evidences of indebtedness are paid and fully discharged, be selected or chosen by the said court. Such managers or trustees shall be selected or chosen in the manner and for the terms within the limitation hereof and may be paid such compensation as may be determined upon by the said court

Source C 8 1-20 1

PROPOSED REVISION

Title 9. CHILDREN—JUVENILE AND DOMESTIC RELATIONS COURTS

9:1-1. Equal rights of parents to services and earnings of minor child; action for injuries to child. The father and mother of a minor child are equally entitled to its services and earnings. If one of the parents be dead, has abandoned the child, or has been deprived of its custody by judgment of any court, the other is entitled to such services and earnings

The parents jointly may maintain an action for the loss of the wages or services of their minor child when such loss is occasioned by an injury, wrongfully or negligently inflicted upon such child. If one of the parents be dead, has abandoned the child, has been deprived of its custody by judgment of any court, or refuses to sue, the other may sue alone

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Nothing contained in this section shall be deemed to supersede, limit, modify or affect the provisions of chapter 15 of Title 34 (§34 15-1 et seq.).

9:2-1
to

9:2-7. Blank. Revised and transferred to 2A 50-29 to 2A 50-35.

9:2-8. Parent or custodian of child unfit; complaint to superior court or judge of juvenile and domestic relations court. When the parents of any minor child, or the parent or other person having the actual care and custody of any minor child, are grossly immoral or unfit to be intrusted with the care and education of such child, or shall neglect to provide the child with proper protection, maintenance and education, or are of such vicious, careless or dissolute habits as to endanger the welfare of the child or make the child a public charge, or likely to become a public charge, or when the parents of any minor child are dead or cannot be found, and there is no other person, legal guardian or agency exercising custody over such child, it shall be lawful for any person interested in the welfare of such child to present to the superior court, or to a judge of the juvenile and domestic relations court a complaint, praying that the child be brought before the superior court, or judge of the juvenile and domestic relations court for commitment pursuant to the proceeding provided for in this chapter.

9:2-9. Appointment of custodian. Upon the filing of the complaint under section 9 2-8, and after an investigation shall have been made by the chief probation officer of the county in which the child may reside, concerning the reputation, character and ability of the plaintiff, or such other person as the court may direct, to properly care for such child, an order shall be made committing the child to the care and custody of such person, who will accept the same, as the superior court, or judge of the juvenile and domestic relations court shall for that purpose designate and appoint, until such child shall attain the age of 18 years, or the further order of the court, provided, however, that in proper cases such care and custody may be exercised by supervision of the child in his own home, unless the court shall otherwise order. The said child may be committed, with such security and on such conditions as the superior court or judge of the juvenile and domestic relations court shall deem proper.

Note of Reporter This is former R S 9 2-10

9:2-10. Commitment of child to child caring society; cost of proceedings; consent to adoption of child; support by relative. The superior court or judge of the juvenile and domestic relations court before which such proceedings shall be conducted, may, in the same manner but in lieu of committing such child, as in section 9 2-11

of this title specified, commit such child to the care and custody of any society duly incorporated under the laws of this state for the care of children. In such case the court may, in its discretion, cause the person in whose custody such child was, or the county in which such child may reside, to pay all costs and expenses of such proceedings, and such person or society or institution to whom or to which such child is committed may, upon special authority granted in the order of commitment, give his or its consent, and such consent will be sufficient, to the legal adoption of such child, provided, however, that the granting of the right to consent to adoption shall in no wise be construed as authority to place a child for adoption except in accordance with the provisions of chapter 3 of this title (§9 3-1 et seq.)

Whenever the court shall have made an order with respect to the care and custody of a child as contemplated by this title, and it shall appear that the person in whose custody such child was is a relative financially able and legally liable to provide support for such child, the court may make a supplementary order requiring such relative to make such payment or payments for the support of such child as the court may deem reasonable under the circumstances

9:2-11. Blank.

9:2-12. Blank. Now found in 3A 7-25

9:3-1. Civil action in county court; who may make; placing children within state for adoption; approval by department of institutions and agencies; penalties. Any unmarried person of full age, a husband with his wife's consent, a wife with her husband's consent or husband and wife jointly, may institute a civil action in the county court of the county wherein the plaintiff or any minor child may reside for permission to adopt such child and change the name of such child. No person, firm, corporation, association or agency shall be permitted to place minor children for the purpose of adoption within this state unless such person, firm, corporation, association or agency has been or shall have been approved for such purpose by the department of institutions and agencies. Any person, firm, corporation, association or agency which has not been approved by the department of institutions and agencies for such purpose making such placement and any person, not previously approved as adopting parents by a person, firm, corporation, association or agency, designated by the department of institutions and agencies for this purpose, receiving a child for adoption in this state shall be guilty of a misdemeanor and for the first offense may be punished by a fine not exceeding \$100 00 and for each subsequent offense may be punished by a fine not exceeding \$1,000 00 or imprisonment for a period not exceeding 1 year, or both.

This prohibition against placement of minor

children for adoption shall not apply when such children are placed for the purpose of adoption with persons related to the said child as brother, sister, aunt, uncle, grandparent or step-parent. The department of institutions and agencies shall establish and maintain a list of all persons, firms, corporations, associations and agencies who have been approved for the purpose of placing minor children for adoption within this state and said list shall be available for inspection by all persons interested therein.

Source R S 9 3-1, as am L 1944, c 239, p 796, §1, L 1945, c 196, p 676, §1

9:3-2. Age and qualifications of adopting parent. The adopting parent shall be at least 10 years older than the adopted child, but this provision shall not affect adoptions properly granted prior to July 4, 1902. The said adopting parent must have attained the age of 21 years, must be a citizen of the United States or have officially declared his or her intention of becoming a citizen; provided, however, that no adoption heretofore granted shall be deemed void or voidable because the adopting parent was not of the age or status of citizenship required by this chapter.

Source R S 9 3-2
Note of Reporter The direction to set forth the citizenship status of plaintiff deleted. Should be covered by rule.

9:3-3. Blank.

Note of Reporter This section should be incorporated into a rule.

9:3-4. Consent required. A written consent, acknowledged or proved in the manner required by law for deeds to real estate, shall be presented to the court with the complaint for adoption, such consent to be obtained from

a The child sought to be adopted if above the age of 14 years, and, in any event, the consent of

b The parents of the child; or

c One parent if the other is dead, unknown or mentally incompetent, or has forsaken parental obligations or been divorced from the father or mother of the child because of his or her adultery or desertion or extreme cruelty, provided, however, that when the consent of 1 parent is not presented with the petition by reason of divorce, if the court granting the divorce has made an award of the custody of the child, consent of such court to the adoption must be presented with the complaint, or

d The legal guardian of the child where both parents are dead, unknown, or mentally incompetent, or have forsaken parental obligations, provided, however, that evidence of guardianship shall be presented to the court with the complaint, or

e The department of institutions and agencies, or any orphanage, children's home or society incorporated under the laws of this state for the care of children, appointed by the court as next friend if there is no guardian in the circumstances described in paragraph "d", such appointment

to be made forthwith upon presentation of the complaint, or

f Any orphanage or children's home or society incorporated under the laws of this state to care for children, or the New Jersey State Board of Children's Guardians, which has acquired the custody and control of the child, by grant of the parents for the full term of minority or by other legal means. A consent under this paragraph shall be under the common seal of the orphanage, children's home or society, or the New Jersey State Board of Children's Guardians, and signed by the president and secretary thereof.

g A parent shall be deemed to be mentally incompetent within the meaning of this chapter when by reason of mental disease, feebleness of mind, or habitual intemperance, he or she is unable to understand and discharge the natural and regular obligations of care and support of the child.

h A person shall be deemed to have forsaken parental obligations within the meaning of this chapter when he or she shall have willfully and continuously either neglected or failed to perform the natural and regular obligations of care and support of the child.

i When an orphanage, children's home, society or agency outside of this state has custody and control of the child, such agency shall furnish its consent to the adoption and submit a verified copy of the release or other legal document by which they obtained such custody and control. Such consent is to be under the common seal of that orphanage, children's home, society or agency and signed by the responsible official thereof.

j Whenever the consent of either or both of the parents of the child is not presented with the petition, the court shall require that proof, by documentary evidence or oral testimony, of the reason for the failure to present such consent shall be given at the hearing.

k The consent of either parent, whether the minor child be legitimate or illegitimate, shall be valid and binding irrespective of the age of such parent at the time of granting consent for the adoption of said minor child.

Source R S 9 3-4, as am L 1944, c 239, p 797, §2

Note of Reporter The nature of the consent required, like the requirement that all records of infant adoption are kept confidential is governed by legislative policy. It is recommended that a study of this entire title be made with a view toward bringing it in conformity with actual practice.

9:3-5. Residence of child in petitioner's home for 1 year; proof. A judgment of adoption shall not be granted unless the child has been living continuously in the home of the plaintiff or plaintiffs for not less than 1 year previous to the hearing of the complaint, provided, however, that the court, if it finds that the best interests of the child so require, may in its discretion grant the adoption after the child has so lived in the home for a minimum period of 6 months.

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At the time of the hearing the court shall require at least 1 witness, other than the petitioner, to attest to the fact that the child has resided in the home of the petitioner for the required time. When the child has been under the custody and control of an orphanage, children's home or society incorporated under the laws of this state for the care of children, or the New Jersey State Board of Child Welfare, the testimony of such agency to this fact shall also be required.

Source R S 9 3-5

9:3-6. Investigation of complaint; report; proof; effect of judgment of adoption. The court shall order an investigation of all complaints for adoption except when consent to the adoption is given by the department of institutions and agencies or any agency thereof, or an orphanage, children's home or society incorporated under the laws of this state for the care of children.

Such investigation as required by this section shall be made by the department of institutions and agencies or by an orphanage, children's home or society incorporated under the laws of this state for the care of children and having the facilities for such investigation, as the court may direct, having due regard for the religious background of the child. The agency directed to make such investigation shall receive the duplicate copy of the complaint, as required to be filed by this chapter, and shall be represented at the hearing. The nature of the investigation shall be such as to verify the allegations of the complaint and reveal such facts as may be necessary to determine the condition and antecedents of the child and of the adopting parents, in order that it may be ascertained whether the said child is a proper subject for adoption, and whether the plaintiff or plaintiffs and their home are suitable for the proper rearing of the child.

The report of such investigation shall be made in writing and returned to the court on the day fixed by the court for the hearing. No judgment of adoption shall be granted until such report be returned, but, if such report is not returned on the day ordered, without fault of the plaintiff or plaintiffs, the court may grant a judgment of adoption upon a later day to be fixed, with due notice thereof being given to the agency directed to make such report.

At the time of the hearing the court shall require at least 1 witness, other than the plaintiff, to testify to the character of the plaintiff, the residence of the plaintiff or the child, and any other facts which the court may require with respect to the welfare of the interested parties.

The entry of a judgment of adoption shall be conclusive evidence of the sufficiency of the consent or consents annexed to the complaint for such adoption and of the rights, duties and obligations established by such judgment, pursuant to the provisions of this chapter, in any action

or proceeding not commenced within 5 years from the date of entry of such judgment.

Source R S 9 3-6, as am L 1940, c 210, p 870, §1

Note of Reporter The requirement for holding such hearings in camera is properly the subject for a rule of court.

9:3-7. Judgment of adoption. Upon the day appointed the court shall proceed to a full hearing of the complaint and the examination of the parties interested, under oath, and if, from the testimony, the court is of the opinion that the facts stated in the petition are true, and that the plaintiff is of good moral character and of reputable standing in the community, and of ability to properly maintain and educate the child sought to be adopted, having reference to the condition in life of the child's parents, and that the best interests of the child would be promoted by such adoption, it shall enter a judgment of adoption, after the entry of which the rights, duties, privileges and relations theretofore existing between the child and his parent or parents shall be in all respects at an end, excepting the right of inheritance, and the rights, duties, privileges and relations between the child and his parent or parents by adoption shall thenceforth, in all respects, be the same, including the right of inheritance, as if the child had been born to such adopted parent or parents in lawful wedlock, except only as otherwise provided in this chapter.

Source R S 9 3-7

Note of Reporter Procedural phrases omitted should be incorporated in the rules.

9:3-8. Record of adoption proceedings.

a All proceedings relating to adoption and all documents filed in any such proceedings, all testimony taken and all orders and judgments made shall be filed under seal by the surrogate and shall not at any time be open to inspection unless the court, upon good cause shown, shall otherwise order. Nor shall the fact of such adoption or the names of the parties thereto or the index thereto be open to inspection or be given out for publication except upon order of the court.

b All reports of the investigation submitted hereunder shall be filed separately and apart from all other papers in the case, and shall not at any time be opened to inspection, except by the parties to the adoption and their attorneys, unless the court, for good cause shown, shall otherwise order.

c Upon application of the adopting parent or parents, the clerk of the court where the decree of adoption was entered shall certify to the bureau of vital statistics of this state the date of entry of the judgment, the names of the natural parent or parents of the child, if the same appear in the judgment of adoption, the names of the adopting parent or parents, the prior name of the child and the new name of the child as changed by the judgment of adoption.

Source R S 9 3-8, as am L 1939, c 355, p 861, §1, L 1943, c 104, p 335, §1

9:3-9. Effect of judgment of adoption; exceptions. Upon the entry of a judgment of adoption, the parents of the child, if living, shall be divested of all legal rights and obligations due from them to the child, or from the child to them; and the child shall be free from all legal obligations of obedience or otherwise to the parents, and the adopting parent or parents of the child shall be invested with every legal right in respect to obedience and maintenance on the part of the child, as if the child had been born to them in lawful wedlock; and the child shall be invested with every legal right, privilege, obligation and relation in respect to education, maintenance and the rights of inheritance to real estate, or the distribution of personal estate, on the death of such adopting parent or parents, as if born to them in lawful wedlock; subject, however, to the limitations and restrictions hereinafter in this section set forth

The adopted child shall not be capable of taking property expressly limited to the heirs of the body of the adopting parent or parents, nor property coming from the collateral kindred of such adopting parent or parents by right of representation

On the death of the adopting parent or parents and the subsequent death of the child so adopted, without issue and without having disposed of the property, real or personal, coming to him on the death of the adopting parent or parents during his lifetime, by deed or by his last will and testament, the property of such adopting deceased parent or parents shall descend to and be distributed among the next of kin of such parent or parents and not to the next of kin of the adopted child. The adopted child shall, however, have the right, during his lifetime, to dispose of any property, real or personal, coming to him from his adopting parent or parents, absolutely and in the same manner as though the same had been acquired by purchase

If the adopting parent or parents shall have other child or children, the children by birth and by adoption shall, respectively, inherit from and through each other, as if all had been children of the same parents born in lawful wedlock

Where a parent who has procured a divorce or a surviving parent, having lawful custody of a child, lawfully marries again, or where an adult unmarried person marries after having secured the lawful custody of a child through adoption, or where the mother of an illegitimate child marries, and such parent or such parent by adoption consents that the person who thus becomes the stepfather or the stepmother of such child may adopt such child, such parent or such parent by adoption so consenting shall not thereby be relieved of any of his or her parental duties toward or be deprived of any of his or her rights over such child, or to his property by descent or succession

Nothing in this act contained shall affect any

rights, duties or obligations created by adoptions heretofore effected

Source R S 9 3-9, as am L 1939, c 355, p 861, §1, L 1943, c 104, p 335, §1

9:3-10. Conveyance of property acquired from adopted parents; effect. Where any child legally adopted under the laws of this state shall have, during his lifetime, disposed of any property, real or personal, coming to him on the death of the adopting parent or parents, such conveyance or transfer of property, real or personal, shall be as valid and binding as though such property had been acquired by such adopted child by purchase, notwithstanding the subsequent death of such adopted child without issue

Source R S 9 3-10

9:3-11. Expenses of proceedings. The expense of a proceeding pursuant to this chapter shall be borne by the plaintiff, including the report of investigation when directed by the court, provided, however, that in such cases a statement of the expense incurred in the investigation shall be annexed to the report, and the department of institutions and agencies, upon reimbursement by the plaintiff of the expenses herein, shall pay same into the general state fund and the expenses of the administration of this chapter shall be included in the annual appropriation law

Source R S 9 3-11, as am L 1939, c. 355, p 863, §2, L 1950, c 41, p 80, §1

9:3-12. Persons in armed forces, adoption of spouse's child by. Any person in the armed forces of the United States desiring to adopt the minor child of his spouse, who, owing to his absence from the United States and the District of Columbia, is unable to attend the hearing and testify under oath, as provided for in such chapter, may, nevertheless, in the discretion of the court, be permitted to adopt such minor child; provided, that the agency ordered to investigate the complaint or required to file a written summary of the case, in verifying the allegations of the complaint, interviews plaintiff personally through its authorized representatives or through the authorized representatives of the American Red Cross and reports fully to the court before whom the hearing is to be had the result of such interview.

Source R S 9 3-12, as am L 1945, c 248, p 772, §1

9:3-13. Spouse's home considered plaintiff's home. For the purposes of this act and to satisfy the requirements of section 9 3-5 of the Revised Statutes the home of the spouse of plaintiff shall be construed to be the home of plaintiff.

Source R S 9 3-13, as am L 1945, c 248, p 772, §2

9:3-14. Consent of commissioner of institutions and agencies to adoption; penalty; exceptions. Any parent, guardian or person having the custody or control of any minor child who desires to offer through the medium of the public press to surrender custody and control of such child

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to any person whatsoever, for the purpose of adoption, shall, before making such public offer, notify the commissioner of institutions and agencies of such intention and secure from him his consent and approval in writing. Any such parent, guardian or person who shall fail to comply with this requirement, shall be deemed guilty of "cruelty and neglect of children" and liable under chapter 6 of this title (9 6-1 et seq) to the penalty therein specified.

This section shall not apply to the state board of child welfare or any children's home, or orphan asylum, or children's aid society incorporated under the laws of this state, and endorsed by the commissioner of institutions and agencies.

Source R S 9 4-19

Note of Reporter Former R S 9 3-14 unnecessary—
(effective date)

9:4-19. Now found in 9 3-14

9:5-1. Assistance to societies by police officers.

All judges, magistrates, constables, sheriffs and police officers shall, as occasion may require, aid any corporation of this state organized under chapter 1 of Title 15, Corporations and Associations Not for Profit (§15 1-1 et seq), for the purpose of the prevention of cruelty to children or for the care and custody of children, its officers, members and agents, in the enforcement of all laws now or hereafter enacted relating to or affecting children, and, for the purpose of bringing offenders against such laws to justice, the like powers shall be and are hereby given to the members, officers and agents of such corporation as are or may be given by law to the members, officers and agents of the society for the prevention of cruelty to animals.

Note of Reporter 9 5-1 to 9 5-4 should be in Title 2 under criminal law, 9 5-5 is renumbered herein as 9 5-1

9:6-1. Abuse, abandonment, cruelty and neglect of child; what constitutes. Abuse of a child shall consist of any of the following acts (a) disposing of the custody of a child contrary to law, (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this state, (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of such child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child, or (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child.

Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child (a) willfully forsaking a child, (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection, (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

Cruelty to a child shall consist in any of the following acts (a) inflicting unnecessarily severe corporal punishment upon a child; (b) inflicting upon a child unnecessary suffering or pain, either mental or physical, (c) habitually tormenting, vexing or afflicting a child; (d) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child, (e) or exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child.

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being.

9:6-1.1. Treatment of ill children according to religious tenets of church. This article shall not be construed to deny the right of a parent, guardian or person having the care, custody and control of any child to treat or provide treatment for an ill child in accordance with the religious tenets of any church as authorized by other statutes of this state; provided, that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated.

9:6-2. "Parent" and "custodian" defined. "Parent", as used in this chapter, shall include the stepfather and stepmother. "The person having the care, custody and control of any child", as used in this chapter, shall mean any person who has assumed the care of a child, or any person with whom a child is living at the time the offense is committed.

9:6-3. Cruelty and neglect of children; fine or imprisonment; postponement and probation; commitment of child to society for prevention of cruelty to children; order for payment for support; failure to pay. Any parent, guardian or person having the care, custody or control of

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any child, who shall abuse, abandon, be cruel to or neglectful of such child, or any person who shall abuse, be cruel to or neglectful of any child shall be deemed to be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding \$500.00 or by imprisonment with or without hard labor, as the court may direct, for a term not exceeding 3 years, or both. If a fine be imposed, the court may direct the same to be paid in whole or in part to the wife, or to the guardian, custodian or trustee of such minor child or children, provided, however, that whenever in the judgment of the court it shall appear to the best interest of the child to place it in the temporary care or custody of a society or corporation, organized or incorporated under the laws of this state, having as one of its objects the prevention of cruelty to children, and the society or corporation is willing to assume such custody and control, the court may postpone sentence and place the child in the custody of such society or corporation, and may place defendant on probation, either with the county probation officers or an officer of the society or corporation to which the child is ordered, and may order the parent, guardian or person having the custody and control of such child to pay to such society or corporation a certain stated sum for the maintenance of such child. When, however, a child is so placed in the custody of such society or corporation, and defendant fails to make the payments as ordered by the court, the court shall cause the arrest and arraignment before it of such defendant, and shall impose upon him the penalty provided in this section.

9:6-4. Jurisdiction of complaints; immediate trial; procedure. Complaints for violation of the provisions of this chapter may be made to magistrate or judge of any municipal court, or to a judge of the county court or criminal district court, or the judges of the juvenile and domestic relations court. If any person charged with any such offense waives indictment and trial by jury, or trial by jury, as the case may be, and request to be tried before the county court or the juvenile and domestic relations court of such county, without a jury, the county prosecutor shall report such fact to the judge of either such court of such county, who, unless he shall think the public interest will be benefited by denying such request, shall try the person so charged and determine and adjudge his guilt or innocence, and full power so to do is hereby conferred upon the county court and the juvenile and domestic relations court. The county prosecutor, in person or by deputy, shall attend the trial before either court, and, if the accused was charged before a magistrate and no indictment has been found, may in lieu of indictment prefer to the court an accusation. If the person so tried shall plead guilty or be convicted in any proceeding in the juvenile and domestic relations court, the court shall

render and record against him such judgment of imprisonment or fine, or both, as would be lawful if he had pleaded guilty or had been convicted on indictment for a like offense in county court, or may place him on probation as provided for in section 9 6-3 of this chapter.

Note of Reporter See Rules 2 3-1, 2 4-10 and 11

9:6-5. Complaints, who may prefer. Any board of education or police department of any municipality, township, towns and boroughs, its designated officers, members or agents, or any society, association or board incorporated or organized under the laws of this state, having as 1 of its objects the prevention of cruelty to children, its officers or agents, may prefer a complaint against and cause to be arrested and prosecuted any person who shall offend against the provisions of this chapter, and aid in prosecuting the complaint before the court.

9:6-6. Disposition of fines, penalties and forfeitures. All fines, penalties and forfeitures imposed and collected in any case when any society, association or board incorporated or organized under the laws of this state having as 1 of its objects the prevention of cruelty to children, shall be complainant, shall inure to such society, to be used by it for the benefit of the children in its care. All other fines imposed by a court in accordance with the provisions of this chapter shall be paid to the overseer of the poor of the municipality where the defendant resided, to be used for the benefit of the poor of that municipality.

9:6-7. Agents of societies for prevention of cruelty to children as police officers. Any duly organized or incorporated humane society, having for one of its objects the protection of children from cruelty, may offer any agents or officers employed by such society to the mayor or other executive officer having authority to commission police officers of any municipality having a regularly organized police department, for the purpose of being commissioned to act as police officers through the limits of such municipality for the purpose of arresting all the offenders against this chapter or any of the provisions thereof, whereupon the mayor in such city shall, if such persons are proper and discreet persons, commission them to act as such police officers, with all the rights and powers appertaining thereto, but no such municipality shall be liable in any way for the salary or wages of such officers, or for any expense whatever in relation thereto, except for the detention of prisoners.

In any municipality not having a regularly organized police department, such humane society may offer similarly qualified persons to the county court whereupon such court, or any judge thereof, shall, if they be fit persons, commission such persons to act as constables, with power to arrest all offenders against this chapter or any

provisions thereof; but no municipality or county shall be in anywise liable for the salary or wages of any such officer, or for any expense in relation thereto, except for the detention of prisoners.

All persons thus qualified under this section shall be deemed to be constables and police officers, and the keepers of jails or lockups or station houses in any of such counties are required to receive all persons arrested by such policemen or constables.

9:6-8. Warrant to enter place or house for supposed violations of chapter; arrest of violators. Whenever any person shall, before a magistrate or justice of the peace, make oath that the affiant believes that this chapter has been or is being violated in any place or house, such justice or magistrate shall forthwith issue a warrant to a constable or other authorized officer to enter such place or house and investigate the same, and such person may arrest or cause to be arrested all offenders and bring them before any judge, magistrate or court of record for a hearing of the case, and all constables and policemen shall aid in bringing all such offenders before such authorities for a hearing.

9:6-9. Complaint to juvenile and domestic relations court; who may file. Whenever the parents, guardian or any person having the custody or control of any minor child shall be convicted of abandoning, abusing, neglecting or cruelly treating said child or children as provided in article 1 of this chapter, any board of education or police department, of any municipality, township, towns and boroughs, its designated officers, members or agents, or any society or corporation organized under the laws of this state, having as one of its objects the prevention of cruelty to children, the probation officer of the county or any person interested in such child and acting as its next friend, may file a complaint setting forth the facts in the case, together with a copy of the record of the case, when such conviction was before another court, with the juvenile and domestic relations court of the county where the child has a settlement.

9:6-10. Investigation and report on complaint. The juvenile and domestic relations court shall cause an investigation to be made, by the probation officer of such county, or by some charitable or eleemosynary corporation or association duly incorporated under the laws of this state, having as one of its objects charitable eleemosynary purposes or the care and protection of children, or for religious purposes, into the financial condition of the parents or relatives of the child financially able and legally liable for its care, the conditions surrounding the home of the parents and any such relatives, and all other facts that will assist the court in determining the matter, and a full report in writing of such investigation shall be filed with the court.

9:6-11. Hearing; order of commitment to guardianship of society; powers of society. The juvenile and domestic relations court in a proceeding initiated under section 9:6-9 of this chapter, may commit such child to the care and custody of any duly authorized or incorporated humane society within this state, having for one of its objects the protection of children from cruelty, and such society shall thereupon have all the rights of a guardian of the person of such child, or make such other or further order as, in the opinion of the court, will be for the best interest of such child. The court may, at any time, modify, revoke or add to the above order.

9:6-12. Guardianship when custodian of child convicted of violation of chapter; complaint to county court; restoration of child to custodian on security given. Whenever any person having the custody or control of any minor shall be convicted of a violation of any of the provisions of this chapter, any person may apply to the county court of the county wherein the offense has been committed for the appointment of a proper guardian for the person of such minor, and such court may, in its discretion, make any such appointment, having due regard in the selection of a guardian to the religious persuasion of the parent or former guardian, or it may place such child in an asylum or home for children, with the powers of a guardian of the person, as may be most expedient, and such court may order the parent to pay such a reasonable sum towards the maintenance of such child, and at such times and in such amounts as such court may see fit; and such court may at any subsequent time, upon being satisfied that the parent has become a fit person to resume the custody of such minor, and upon reasonable security, to be fixed by the court, being given for the faithful observance of the provisions of this chapter, remand such minor to the custody of such parent, subject, nevertheless, to the obligation of any indentures or legal engagements already entered into on behalf of such minor by his guardian.

9:7-1. Consent of commissioner of institutions and agencies. Any person, corporation, association or institution desiring to bring, send, or cause to be brought or sent, or receive into this state any dependent child for the purpose of placing such child in any home in this state, or procuring the placing of such child in any home in this state, shall first obtain the consent and approval of the commissioner of institutions and agencies entitling such person, corporation, association or institution to the privilege of bringing, or sending, or causing to be brought or sent, or receiving, into this state such child for placement in conformity with such rules and regulations of the state board of institutions and agencies con-

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sistent herewith as it may from time to time adopt

Each and every application for consent and approval as provided in this section must be submitted on the form approved by the commissioner of institutions and agencies for the purpose and must be accompanied by a certificate or other available evidence that the applicant has obtained a license or approval as may be granted or required by the state board of institutions and agencies or similar body, or officer exercising similar authority, of the state from which the child is to be brought or sent into this state.

9:7-2. Indemnity bond; conditions. Any person, corporation, association or institution, before obtaining the consent and approval of the commissioner of institutions and agencies for bringing or sending, or causing to be brought or sent, or receiving, any such child into this state, shall be required to furnish an indemnity bond, with corporate surety, in favor of the state of New Jersey in the penal sum of \$1,000 00, to be approved by the commissioner of institutions and agencies, conditioned as follows:

That such person, corporation, association or institution will not send or bring, or cause to be brought or sent, or receive into this state any child that is incorrigible, or one that is of unsound mind or body, but nothing herein contained shall be construed to mean that blindness in itself shall act as any barrier to the importation of any such child, subject to all other consistent provisions of this chapter; that such person, corporation, association or institution will, before the placement of any child, report to the commissioner of institutions and agencies its name and age, and the name and residence of the person with whom it is to be placed, that if any such child shall, before it reaches the age of 21 years, become a public charge such person, corporation, association or institution will, within 30 days after written notice shall have been given of such fact by the commissioner of institutions and agencies, remove such child from this state, and that if any such dependent child shall be convicted of crime or misdemeanor and imprisoned within 3 years from the time of its arrival within this state, such person, corporation, association or institution will remove from this state such child immediately upon its being released from such imprisonment, or within 30 days thereafter upon written notice as aforesaid, and that if any such child who shall become a public charge as aforesaid, or who shall be convicted as aforementioned, shall not be so removed from this state, then such person, corporation, association or institution shall at once and thereby forfeit such sum as this state, or any county, or municipality thereof, shall have expended in the care, maintenance or prosecution of such child; that such person, corporation, association or institution will place or cause

to be placed each such dependent child under circumstances which will secure to such child a proper home, and will make the person so receiving such child responsible for its proper care, education and training; that such person, corporation, association or institution will properly supervise the care and training of each such child and that each such child shall be visited at least once a year by a responsible agent of the person, corporation, association or institution so placing or causing to be placed, such child as herein provided, that such person, corporation, association or institution will make to the commissioner of institutions and agencies such reports as such commissioner from time to time may require

9:7-3. Violation of §§9:7-1 and 9:7-2; responsibility for care and maintenance of child. Any person, corporation, association or institution, or any officer or agent thereof, who shall bring, or send, or cause to be brought or sent, or receive any dependent child into this state, without having first obtained the consent and approval of the commissioner of institutions and agencies and furnished an indemnity bond as herein provided, and any other person who then or later receives such child for placement in his or her home, shall, both individually and collectively, be deemed for all purposes responsible for the care, support and maintenance of such child in the same manner and extent as a parent is responsible for the care, support and maintenance of a child under the laws of this state, provided, however, that the sending, bringing or receiving of any dependent child into this state, with or without the consent and approval of the commissioner of institutions and agencies, shall not of itself establish any rights to custody or adoption of such child

9:7-4. Relative may bring child into state; immunity does not pass to others. The provisions of sections 9 7-1 to 9 7-3 of this chapter shall not apply to a relative bringing or receiving a child into this state for the purpose of placement in his or her own home, when such relative is a person responsible under the laws of this state for the support and maintenance of such child; provided, however, that the immunity granted by this section shall not pass to any other person who may later receive such child for placement in his or her home

Source Same as amendment of 1949

9:7-5. Recovery of penalty in bond. The penalty provided in the bond referred to in section 9 7-2 of this chapter shall be recovered in any court of competent jurisdiction in the name of the state of New Jersey, and such bond shall remain in force, and actions may be brought thereon, during any time within which there may be, within this state, any child under the age of 21 years who shall have been brought, sent or

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received into this state by the principal obligor of such bond

Source. Same as amendment of 1949

9:7-6. Blanket consents and approvals; reciprocal agreements; assignment of powers and duties. In carrying out the powers, duties and responsibilities provided by this chapter, the commissioner of institutions and agencies, subject to approval of the state board of control of institutions and agencies may

a grant blanket consents and approvals and approve blanket indemnity bonds with respect to public or private agencies of other states which are accredited in their respective states for the placement of children; and

b enter into reciprocal agreements with the state board of institutions and agencies of similar body of any other state, or the authorized representative thereof, with respect to the interstate placement of children; which agreements, in proper case, may be made effective in lieu of consents and approvals, or indemnity bonds, or both, as required by this chapter; and

c may assign any or all of the powers, duties, and responsibilities provided by this chapter for administration by the state board of child welfare

9:8-1. Orphan asylum associations; powers as guardians. Any orphan asylum association organized under the provisions of section 15 1-1 et seq of the title corporations and associations not for profit shall have the following powers in addition to those given by section 15 1-4 of the aforesaid title;

Guardianship. a To apply for and accept the guardianship of orphans, or children who have no mother, upon giving proper security and complying with the laws of this state relative to guardianship

Care of children. b. To receive and retain any orphan child or child having no mother, as may be placed under its charge, subject to such rules, by-laws and regulations as may from time to time be adopted by the trustees of the association.

9:9-1. Grand lodge may become guardian of child. When a benevolent or fraternal organization or society, having a grand lodge or other legislative head duly organized and existing in this state and incorporated under the laws thereof, has established a home for widows, orphans and aged members of such society in this state, the grand lodge or other legislative head may become the guardian of the person of a child committed to its care, either upon the surrender of the child to its charge and custody by a written instrument signed by the child's parents, or the surviving parent, or the child's guardian, or by appointment to the guardianship by a court of this state competent to appoint guardians for the persons of infants.

9:9-2. Control and duty of society. A society so appointed to the guardianship of a child shall have the entire and exclusive control of the child during its minority, and shall support, maintain and educate the child until it attains the age of 18 years or until the child is disposed of as provided in section 9 9-3 of this title

9:9-3. Power of society. Such society may, in its discretion, or the discretion of the board or committee having control of the home, place the child in a suitable home

The society shall, notwithstanding such placement, exercise a general oversight of the child so bound and may retake the child into its own custody whenever it appears to the society, or its board or committee, that the child's welfare so requires

Chapter 10. COUNTY DETENTION SCHOOLS.

(This chapter to remain as in 1937 R S 9 10-1 through 9 10-6, except that "county court" should be substituted for "court of common pleas" whenever the latter appears)

9:10-1. Establishment and management. The board of chosen freeholders of a county having a juvenile and domestic relations court may establish and equip a school of detention for dependent and delinquent children under 16 years of age whom it may be necessary to detain by order or direction of the county court and for that purpose may purchase suitable land and buildings or erect buildings on land owned by the county, but the consent of such court shall be had before any lands shall be purchased or buildings erected for such purpose

The school of detention with the land belonging thereto shall constitute a special school district in such county and the county superintendent of schools shall apportion and pay to the county treasurer, who shall be the custodian of the school's moneys, such apportionment of state school moneys and interest and surplus revenues as are paid to other school districts

The general management of the detention school when completed shall be vested in a board of directors consisting of the judge of the juvenile and domestic relations court, the county superintendent of schools, 2 members of the board of chosen freeholders selected by the director of such board and such director and the superintendent of schools of the most populous city in the county

Source, R S 9 10-1

9:10-2. Incurrigible, insubordinate and disorderly children and habitual truants. Children under the age of 16 who shall be habitual truants from school or habitually insubordinate or incurrigible and disorderly during attendance at school and who have been complained against in accordance with subtitle 5 of this (9 19-1 et seq) shall be received by the school of detention

All children under 16 years of age arrested for any cause except murder or manslaughter,

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and school children habitually truant or incorrigible may by order of the juvenile and domestic relations court be held in the detention school until final judgment

9:10-3. Scope and purpose of school; personnel. A county school of detention shall be arranged and conducted so far as practicable for the safe custody of the inmates and so far as duration of commitment permits for their training for good citizenship and self-support. There shall be ample ground for farming or gardening and shops or other means for industrial training and the institution shall be maintained or conducted as a home.

To this end a superintendent and such teachers, matrons, farmers and other employees shall be employed by the board of directors as in their judgment may be necessary for the proper maintenance of the school and grounds and the proper care, instruction and training of the children.

The superintendent shall be a competent male or female person of good moral character and shall reside in the school. The superintendent or principal teacher shall prepare and adopt a course of study and training for the pupils of the school subject to approval of the board of directors and the state board of education. The teachers shall have the qualifications and certificates of public school teachers in the public schools of this state. The principal teacher shall be the supervising principal and the school shall be entitled to apportionment of school moneys as a school district under the supervision of a supervising principal. The teachers and principals shall make such reports and keep such records as are required in other school districts in the county.

The superintendent shall employ, subject to the approval of the board of directors, such additional help as may be necessary for the maintenance of buildings and grounds. The compensation and terms of service of superintendent and other employees shall be fixed by the board of directors. Whatever sum in addition to money received from the state is necessary to operate the school shall be appropriated by the board of chosen freeholders. All bills shall be paid by the custodian of the school's moneys on order signed by the president and secretary of the board of directors.

9:10-4. Superintendents of detention house or school in certain counties. The board of chosen freeholders of a county of the second class, the third class of the fifth class, which has a detention school or a detention house may by resolution appoint a superintendent therefore who in addition to his duties as superintendent shall be an assistant county probation officer with all the powers and duties prescribed by law for an assistant probation officer. He shall perform such duties as shall be fixed by the board or by statutes relating to detention house or schools.

He shall hold office during the pleasure of the board and his salary shall be fixed by the board.

9:10-5. Records and reports. The superintendent of a county school of detention shall keep a complete record of children committed thereto, containing the name, address and age of each child, cause of detention, time of detention, offense alleged to have been committed of any, and any other useful data or information the judge of juvenile court may direct to be kept. He shall also keep a record of all expenditures made by the county for the care and maintenance of the school.

He shall make a report to the board of chosen freeholders between the 1st and 31st of December in each year containing an itemized statement of all such expense necessary to maintain the school and the number of inmates during each month.

The judge of juvenile court at any time may require the superintendent to furnish information concerning the conduct, maintenance or inmates of the school.

9:10-6. Bonds. For the purpose of obtaining means for the purchase of lands and buildings or the erection of buildings as authorized by section 9 10-1 of this title a county may issue bonds to an amount not exceeding one-half of 1% of the ratables of the county for the purpose of establishing a detention school.

Chapter 11. COUNTY PARENTAL SCHOOLS.

(This chapter to remain as in 1937 R S 9 11-1 through 9 11-8, except as to 9 11-1, which is to remain as amended in 1950.)

Chapter 12. COUNTY HOMES.

(This chapter to remain as in 1937 R. S 9 12-1 through 9 12-2.)

Chapter 13. CRIPPLED CHILDREN.

(This chapter to remain as in amendment of 1948 known as 9 13-1 and 9 13-2 also as appears in 1937 R. S. 9 13-3 through 9:13-8.)

Chapter 14. TUBERCULAR CHILDREN.

(This chapter to remain as in 1937 R S 9 14-1 to 9 14-2.)

Chapter 14A. DEAF CHILDREN.

(This chapter to remain as in 1937 R S 9.14A-1.)

Chapter 15. LEGITIMATION.

(This chapter to remain as in 1937 R S 9.15-1, except that subtitle 4 to be "Children Born out of Wedlock" instead of "Illegitimate Children".)

Chapter 16. CUSTODY AND SUPPORT.

9:16-1. Mother to have custody of child born out of wedlock; custody when mother unfit. The mother of a child born out of wedlock, etc (same as 1937 R S 9 16-1, except where the words court of chancery appear use the words superior court).

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9:16-2. Right of child born out of wedlock to support of parents. A child born out of wedlock etc (same as 1937 R S 9 16-2)

9:16-3. Proceedings to enforce support; jurisdiction. Proceedings to enforce the obligations imposed by section 9.16-2 etc (same as 1937 R S. 9 16-3 except where "overseer of the poor" appears use welfare director)

9:16-4. Remedy to be cumulative. (Same as 1937 R S 9 16-4)

Chapter 17. BASTARDY PROCEEDINGS (9:17-1 to 9:17-27 Repealed).

Chapter 17. PROCEEDINGS TO ESTABLISH PATERNITY.

9:17-1. Who may be complaining witnesses. A woman having given birth to a child out of wedlock, or whose husband denies the paternity of a child born to her, and application being made to any public agency for aid and assistance for the support of herself or child, she shall be the complaining witness in these proceedings

9:17-2. Welfare director or State Board of Child Welfare to be complainant. The welfare director of the municipality or the county wherein the complaining witness shall have a settlement, or the officer or agent designated by the State Board of Child Welfare, being satisfied that the said mother or child is, or likely to become a public charge, shall file a complaint as herein directed and the 1 so filing shall be known as the plaintiff

9:17-3. Proceedings to be civil in nature. Proceedings herein shall be civil in nature and the practice and procedure in civil matters shall govern

9:17-4. Jurisdictional age of parties. Where the complaining witness and the defendant are over the age of 18 years, the municipal court of the community wherein the complaining witness has her settlement shall have jurisdiction. If either the complaining witness or the defendant are under the age of 18 years, the juvenile and domestic relations court of the county wherein the complaining witness has her settlement, shall have exclusive jurisdiction.

9:17-5. Blank

9:17-6. Filiation order entered on admission of parentage. If upon the return of the initial process the defendant shall admit that he is the father of the child whose parentage is in question, and the court being satisfied, having given due consideration to the age of the parties and the circumstances, shall thereupon enter its order of filiation as in such case where there has been a trial and a finding of a jury that the defendant is the father of the child

9:17-7. Blood tests mandatory; complaint dismissed upon finding of exclusion; mistrial to

make tests known to jury. Upon the filing of the complaint, the court shall order a blood test of the child, the mother and the putative father. Such tests shall be made by or under the direction of the board of health of the municipality or county, as the case may be, and shall conform to the established standard practice for the making of such tests. The expense and cost thereof shall be borne by the complainant. If the defendant shall refuse to submit to such test, that fact can be made known at the trial. If the tests show an exclusion of the defendant as the father of the child, the court shall thereupon dismiss the complaint and discharge the defendant should he be in custody and cancel any bond that has been given. If the tests do not exclude the defendant as the probable father of the child, the court shall proceed with the trial. The making of the tests and the results thereof shall not be made known at the trial and if such are, and there is a jury, the judge shall order a mistrial

9:17-8. Blank

9:17-9. Blank

9:17-10. Finding in favor of defendant; release and cancellation of bond. If the verdict of the jury or the finding of the court where there has been no jury is that the defendant is not the father of the child whose parentage is in question, the defendant shall forthwith be released and any bond given shall be canceled. All costs of the trial shall then be paid by the complainant

9:17-11. Finding against defendant over 18 years; order; bond; probation; commitment to county jail or penitentiary. If the verdict of the jury or the finding of the court where there has been no jury is that the defendant is the father of the child whose parentage is in question, and the defendant is over the age of 18 years, the court shall enter its order of filiation and fix the amount of support to be paid by the father. The said father may be placed on probation to the chief probation officer of the county or the court may order a bond to be given to insure compliance with the order of support. Where a bond is so ordered and the defendant fails to comply therewith, the court may commit him to the county jail for 90 days or until the bond shall have been given. If at the expiration of 90 days the said father has failed to comply with the said order and no bond has been given, he shall be then committed to the county penitentiary for 1 year. Such commitment to the county penitentiary shall in no wise relieve the defendant from complying with the order so made

9:17-12. Finding against defendant under 18 years; order; probation; detention. If the verdict of the jury at the trial in the juvenile and domestic relations court be that the defendant

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is the father of the child whose parentage is in question, the court shall enter its order of filiation and place the father on probation to the chief probation officer of the county and fix the amount of support to be paid by the father, such amount to be paid may be fixed at a later date after a report of investigation has been made by the chief probation officer of the county. The court may order the father detained at a place provided for the detention of juveniles.

9:17-13. Order of filiation; duration; not to be challenged. The order of filiation as to any payments for the support of the child may be changed or modified at any time upon application and hearing had by the court making the original order. The order as to support shall remain in force and effect until the child shall have attained the age of 18 years or has sooner become emancipated. The order as to paternity cannot at anytime be challenged, unless an appeal has been taken as hereinafter provided and the said order vacated on such appeal.

9:17-14. Appeals taken to superior court, appellate division. Either party to a proceeding to establish paternity as herein set forth, may, if aggrieved by the order of the trial court, appeal to the appellate division of the superior court as is provided for appeals from the county courts.

9:17-15. Absconding father. Where a defendant has been found to be the father of a child as in the chapter provided and he departs from the jurisdiction and cannot be found he shall be prosecuted as a deserting father as provided by law and any bond that has been given shall be forfeited.

9:17-16. Seizure; application to court. If the reputed father or mother of a child born out of wedlock runs out of the municipality or the county leaving the child a charge upon such municipality where he was born or legally settled, and such father or mother has estate sufficient to support the child and discharge the municipality, the welfare director of such municipality may apply to the court wherein the child's paternity was established or a like court in such county where the estate of said father or mother may be, whether the estate be real or personal, or any part thereof is situated, for a warrant, under the seal of such court, which court is hereby authorized to issue the same, to seize and take the goods and chattels and let out and receive the annual rentals and profits of the real estate of such father or mother so absconding, for and towards the sustenance, rearing, and education of such child.

9:17-17. Sale of property; use of rents; accounting. After the seizure as above provided for has been confirmed by the court, the welfare director may, from time to time, and as often as the case may require, under the direction of the court, sell and dispose of so much of the

goods and chattels at public sale to the highest bidder, and receive the rents and profits of the real estate, or so much thereof as shall be ordered by the court. The money thereby arising shall be applied towards the sustenance, rearing and education of the child and the welfare director shall be accountable therefor to the court.

9:17-18. Parties; judgment; actions. Where a cash bond has been given for the performance of an order of filiation and the father has failed to comply with the order the court may order all or such part thereof paid over to the welfare director where the child has a settlement, for its support and maintenance. Thereupon the court shall cite the said father in contempt for failure to comply with the said order for support. Where a bond with sureties has been given and there has been a default in compliance with the order of filiation and a breach has or shall happen in the condition of the said bond, the same may be prosecuted by the counsel or attorney of the municipality at whose instance the proceedings were originally taken or the prosecutor of the county wherein the trial was had. The action shall be in the name of the state of New Jersey, and the judgment, if it passes against the defendants, shall be for the penalty of the bond. Breaches shall be assigned as in actions on bonds with conditions other than for the payment of money and the same proceedings shall be had in all respects.

9:17-19. Proof of damages; further writ; distribution of money. In prosecuting a bond pursuant to section 9:17-18 of this title, the actual expenditure of money by any municipality of state board of child welfare need not be proved, but the failure to pay a sum ordered shall be deemed a breach of conditions of the bond, and the damages to be assessed shall be the sum which was ordered paid and which was withheld until commencement of the action, with interest thereon.

For any breach which shall happen after recovery of damages or the commencement of an action, an appropriate order shall be made, upon which damages shall be assessed from time to time as above provided.

Money collected on the bond shall be paid to such municipality as may have incurred expenses in supporting the child or its mother during confinement, or from costs therefrom arising.

9:17-20. Inquiry into qualifications of sureties; new bond. After a bond has been entered for the performance of an order of filiation, the welfare director of a municipality upon which the child born out of wedlock is or may become a public charge may apply to the court having jurisdiction wherein the municipality is situated to inquire into the qualifications of the surety or sureties upon the bond.

If the surety or sureties have died, or are not then satisfactory to the court, it may, upon such

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notice as it may deem proper, order a new bond to be given with good and sufficient surety or sureties and conditions similar to the bond replaced

When a new bond is so given, the bond replaced shall no longer secure future payments but shall remain valid as to any arrears in payments up to the time the new bond is executed

9:17-21. Failure to execute new bond; commitment. If the reputed father fails to give a new bond when so ordered, the court may in its discretion commit him to the county jail or penitentiary of the county, there to remain until he complies with the order or is discharged in the manner provided by section 9:17-22 of this title

9:17-22. Discharge of indigent father. When a person is committed to jail or the penitentiary for failure to comply with an order of filiation, the juvenile and domestic relations court of the county within he is committed shall from time to time inquire into his circumstances, where the commitment has been other than provided in section 9:17-11 of this title, and the ability of the father to procure sureties to be bound with him. If the court shall find that the father is wholly unable to support the child or contribute to its support or procure sureties, the court may order the father to be discharged from such jail or penitentiary

9:17-23. Recommitment of father discharged as indigent; bond; discharge. When a person has, because of inability to secure a bond or comply with the order of filiation, been discharged from imprisonment and has become able to secure the bond or comply with the order, the court may, on application of the welfare director of a municipality interested in the order, and at least 3 days' written notice to such person, served personally or left at his place of abode, inquire into the circumstances and ability of the father

If it appears that the father has become able to secure the bond, or to comply with the order of filiation, the court may commit the father to the county jail or penitentiary, there to remain until he secures the bond and complies with the order and pays all costs, or is discharged in the manner provided in section 9:17-22 of this title

9:17-24. Disposition of fees received. All fees and costs pursuant to proceedings instituted under this title shall be paid to the municipality or the county instituting the action

9:17-25. Costs; losing party to pay. In actions and proceedings pursuant to this chapter the losing party shall pay all costs of the action or actions as in trials in the county courts in civil cases

9:18-1. Short title; construction. This subtitle may be cited as the "juvenile and domestic

relations court law", and shall be liberally construed to accomplish its purposes

Source R S 9 18-1

9:18-2. Definitions. When used in this act, unless the context otherwise requires,

a "Court" means juvenile and domestic relations court.

b. "Judge" means judge of the juvenile and domestic relations court

c "Child" means a person less than 18 years of age

d "Adult" means a person 18 years of age or older

e The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of the act

Source 9 18-2

Note of Reporter This is taken from page 8 of the Revised Edition 1949 of the Standard Juvenile Court Act of the National Probation and Parole Association. It increases the number of definitions in the present section

9:18-3. Purpose of subtitle; children as wards of state. The purpose of this subtitle is to secure for each child coming under the jurisdiction of the juvenile and domestic relations court such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state, and when such child is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents

The principle is hereby recognized that children under the jurisdiction of the court are wards of the state, subject to the discipline and entitled to the protection of the state, which may intervene to safeguard them from neglect or injury and to enforce the legal obligations due to them and from them

Source R S 9 18-3

9:18-4. Juvenile and domestic relations court; creation; seal. There is hereby established in each county a court to be called the juvenile and domestic relations court. Said court shall be a court of record having the right to use a seal and to punish for contempt and the judges, clerks, and referees thereof shall have power to administer oaths and affirmations

Source R S 9 18-4

Note of Reporter Wording revised from present statute to conform with Revised Edition 1949 of the Standard Juvenile Court Act of the National Probation and Parole Association

9:18-5. Appointment of judges in certain counties; term; salary; practice of law. The governor, with the advice and consent of the senate, shall appoint in each county of the first class, and in each county having a population of not less than 305,000 nor more than 370,000 may appoint a counselor-at-law to be the judge of the juvenile and domestic relations court of the county

The judge shall hold office for a term of 5 years and until his successor is appointed and

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confirmed His salary shall be paid by the board of chosen freeholders in such amount as such board shall determine

The judges in counties of more than 800,000 inhabitants shall devote their entire time to their judicial duties and shall not engage in the practice of law.

Source R S 9 18-5, as am L 1945, c 291, p 842, §1

9:18-6. County judge to be judge of juvenile court in other counties. In counties other than those in which the appointment of judges is provided by sections 9 18-5, 9 19-1 and 9 19-2 of this title the judge of the county court shall be the judge of the juvenile and domestic relations court

If there be more than one county judge in the county, they shall determine which of their number shall preside over the court and if they cannot decide, the chief justice of the supreme court shall designate which of them shall preside over such court

Source R S 9 18-6

9:18-7. Absence or disability of judge. In the event of death, sickness, disability, absence, or disqualification of a judge of the juvenile and domestic relations court, however appointed or designated, any judge of the county court of such county or of another county or any judge of the juvenile and domestic relations court of any other county may hold the juvenile and domestic relations court when assigned by the chief justice of the supreme court

Source R S 9 18-7

9:18-8. Clerk and employees; appointment; salaries; county clerk to serve, when. The judge may appoint such clerks, court attendants, sergeant at arms and other necessary employees as the board of chosen freeholders of the county may authorize, and such board shall fix their salaries. The salaries shall be in lieu of all fees and allowances except necessary expenses actually incurred in the performance of their duties. Court attendants serving in the juvenile and domestic relations court on July 4, 1929, shall continue in their respective positions, under the provisions of this subtitle

In counties where no special clerk is appointed, the county clerk shall act as clerk of the court.

No compensation shall be allowed to any public officers or official for any service performed under and by virtue of the provisions of this subtitle, except as expressly provided for by law

Source 9 18-8 and 9 18-10

Note of Reporter Combines 9 18-10 with 9 18-8, where it properly belongs

9:18-9. Probation officers as officers of court. The county chief probation officer and probation officers of the county shall have charge of the probation work of the court

Source R S 9 18-9

9:18-10. Court quarters. Suitable quarters shall be provided by the board of chosen free-

holders for the hearing of cases and for the use of the judge, and other employees of the court

Source R S 9 18-11

9:18-11. Exclusive jurisdiction; juvenile delinquency defined; habitual offenders of the age of 16 and 17 years; demand for jury trial; case referred to county prosecutor. The juvenile and domestic relations court shall have exclusive jurisdiction to hear and determine all cases of juvenile delinquency

Juvenile delinquency is hereby defined as the commission by a child under 18 years of age of any act, except as hereinafter excepted, which when committed by a person of the age of 18 years or over would constitute

a A felony, high misdemeanor, misdemeanor, or other offense, or

b The violation of any penal law or municipal ordinance, or

c Any act or offense for which he could be prosecuted in the method partaking of the nature of a criminal action or proceeding, or

d Being a disorderly person,

And also the following acts on the part of a child under the age of 18 years

e Habitual vagrancy, or

f Incurability, or

g Immorality, or

h Knowingly associating with thieves or vicious or immoral persons, or

i Growing up in idleness or delinquency, or

j Knowingly visiting gambling places, or patronizing other places or establishments, his admission to which constitutes a violation of law, or

k Idly roaming the streets at night, or

l Habitual truancy from school, or

m Deportment endangering the morals, health or general welfare of said child

The commission of an act which constitutes a violation of the provisions of chapters 3 or 4 of Title 39, Motor Vehicles, of the Revised Statutes, or of any supplement thereof, by a child of or over the age of 17 years, who is the holder of a valid license to operate a motor vehicle under the laws of this or any other state, shall not constitute juvenile delinquency as defined in this section

If it shall appear to the satisfaction of the court that the case of any juvenile of the age of 16 or 17 years should not be dealt with by the court, either because of the fact that the person is an habitual offender, or has been charged with an offense of a heinous nature, under circumstances which may require the imposition of a sentence rather than the disposition permitted by this chapter for the welfare of society, then the court may refer such case to the county prosecutor of the county wherein the court is situate

Such case will thereafter be dealt with in exactly the same manner as any other criminal case involving an adult offender

Any juvenile of the age of 16 or 17 years may

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demand a presentment and trial by jury and, in such case, when this fact is made known to the court, such case shall be referred to the county prosecutor and dealt with in exactly the same manner as any other criminal case involving an adult offender. Every case so referred shall be accompanied by all documents pertaining thereto
Source R S 9 18-12, as am L 1948, c 284, p 1191, §1

9:18-12. Exclusive jurisdiction; material witness. The juvenile and domestic relations court shall also have exclusive jurisdiction of any child under 18 years of age who may be designated a material witness.

Note of Reporter. Juveniles designated as "material witnesses" are sometimes kept in custody for months awaiting a criminal prosecution of some adult. This section gives the juvenile court jurisdiction over material witnesses, and proposed Rule 6 6-9 provides for their release upon conditions prescribed by the court after notice to the interested parties

9:18-13. Children as wards of court. Children who appear before the court in any capacity shall be deemed to be wards of the court, and protected accordingly
Source R S 9 18-20

9:18-14. Fingerprinting of alleged offenders of or over 17 years of age authorized; destruction of fingerprints on dismissal or acquittal. Any person of or over the age of 17 years and under the age of 18 years, who shall have been arrested and charged with the commission of any offense which, except for the provisions of the act to which this act is a supplement, would be an indictable offense, may be fingerprinted, but in case such person is found not to be guilty of such offense or such charge is dismissed, the state bureau of identification or any police department having possession of the same shall deliver such fingerprints to a judge of the court having jurisdiction of said proceedings, upon demand, and they thereupon shall be destroyed

Source R S 9 18-12 1, L 1948, c 284, p 1193, §2

9:18-15. Retention of jurisdiction; commitment of child to institution. In any case wherein the court shall have acquired jurisdiction of a child, such jurisdiction may be retained during the continuance of the term for which such child shall have been committed, or if released by the court before the expiration of such commitment and placed on probation, or if placed on probation in the first instance, then such jurisdiction may be retained for the period of such probation notwithstanding such child shall have attained the age of 18 years during service of such commitment or the period of such probation

In any case wherein the court shall have acquired jurisdiction of a child, such child may be committed to any institution to which he or she might have been committed by such court, notwithstanding such child shall have attained the age of 18 years after such court shall have acquired jurisdiction over such child

Source R S 9 18-13

9:18-16. Transfer of criminal and quasi crim-

inal cases against child; detention to await hearing. If during the pendency of a criminal or quasi criminal charge against any person in any other court, it shall be ascertained that such person was under the age of 18 years at the time of committing the offense, such court shall immediately transfer such case together with all the papers, documents and testimony connected therewith to the juvenile and domestic relations court having jurisdiction

The court making such transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile and domestic relations court or to that court itself, unless the court making the transfer shall release the child in the custody of some suitable person to appear before the juvenile and domestic relation court at a time designated in the order

The juvenile and domestic relations court shall thereupon proceed to hear and dispose of the case in the same manner as if it had been instituted in that court in the first instance

Source R S 9 18-16

Note of Reporter Age 16 changed to "18" to conform with L 1946, c 77, p 268, §2 raising the jurisdiction of the court

9:18-17. Trial of child in another court; consent of juvenile court judge necessary. No child under the age of 18 years shall be charged with or convicted of a crime in any court except with the consent of the judge of the juvenile and domestic relations court

Source R S 9 18-17

Note of Reporter Age "16" changed to "18" to conform with L 1946, c 77, p 268, §2 raising the jurisdiction of the court

9:18-18. Concurrent jurisdiction; contempt. The juvenile and domestic relations court shall also have jurisdiction to hear and determine in a summary manner disputes and complaints

a Involving the domestic relation or the welfare of children, where jurisdiction is vested by law in any court of this state except the superior court, chancery division or the county court as successor to the orphans' courts

b Involving matters of support or [temporary] custody of children concurrently with the superior court, chancery division

c Involving violations of subtitle 15 of the title Administration of Civil and Criminal Justice (§2 201-1 et seq), chapter 1 of the title Poor (§44 1-1 et seq), chapter 6 and chapter 17 of this title (§9 6-1 et seq, and 9 17-1 et seq), and article 4 of chapter 5 of the title Institutions and Agencies (§30 5-33 et seq), together with any other laws or future enactments covering similar complaints or offenses, where the gravamen of the complaint under such laws or enactments is the failure or neglect of 1 member of the family to satisfy or discharge his legal obligations to another member of the family.

d Against any person who abuses, neglects, cruelly treats or abandons a child or who contributes to the delinquency of a child

e Involving the domestic relation and the court

may order adequate support of any wife, child, children or family where the husband or father deserts his wife, or child or children even though they continue to live in the same household, or where the husband or father forces his wife or children to leave the home because of his cruel and inhuman conduct and the court shall have the power to provide by appropriate order for their support and maintenance

Any person who fails to comply with the order of the court relative to the support of any wife, child, children or the entire family, may be adjudged guilty of contempt

Source R S 9 18-14, as am L 1946, c 77, p 268, §2, L 1950, c 337, p 1117

Note of Reporter Age "16" changed to "18" to conform with L 1946, c 77, p 268, §2 raising the jurisdiction of the court

9:18-19. Support proceedings against nonresidents on behalf of residents; taking of testimony.

The juvenile and domestic relations court of each county is hereby empowered to take testimony in all proceedings to compel support of a wife, child, and poor relative, or any of them, residing within the territorial jurisdiction of such court in any case where the person legally liable therefor resides in a state, territory or possession of the United States having substantially similar or reciprocal laws. In such cases, upon complaint made by or on behalf of such wife, child, and poor relative, or any of them, the court shall forward duly exemplified transcripts of such testimony and such reports as the court may order and the court's recommendation, based on all of the foregoing, to the appropriate official in such other state, territory or possession who is authorized by law to receive the same. Such appropriate official shall be one who has the responsibility, power and authority to institute and prosecute such support proceedings, on behalf of such wife, child, and poor relative, or any of them, in the court of such other state, territory or possession having jurisdiction and control of such support proceedings and the power to order the person legally liable therefor to provide support for such wife, child, and poor relative, or any of them. Support, as contemplated by this section, includes necessary food, shelter, clothing, care, medical or other legal remedial expenses, expenses of confinement, expenses of education of the child, funeral expenses and such other proper and reasonable expenses as justice requires, having due regard to the circumstances of the respective parties

Source R S 9 18-17 1, L 1949, c 122, p 490, §1

9:18-20. Support proceedings on behalf of non-residents against residents; powers of court. Upon complaint of the county adjuster of any county, acting under the authority and responsibility of this act on behalf of a wife, child, and poor relative, or any of them, residing in any state, territory or possession of the United States having substantially similar or reciprocal laws, the juvenile and domestic relations court of such

county is hereby empowered to order the adequate support of such wife, child, and poor relative, or any of them, by any person legally liable therefor who resides within the territorial jurisdiction of such court, in like manner as provided by law for support proceedings in which the court has jurisdiction over the persons of all the parties thereto. The powers conferred by this section may be exercised without the necessity of personal appearance of such wife, child, and poor relative, or any of them, provided that duly exemplified transcripts of testimony and copies of any probation reports or other official reports made in connection with the matter shall be forwarded to such county adjuster by the court of the state, territory or possession wherein such wife, child, and poor relative, or any of them, resides, which transcripts and copies of reports shall be filed with the complaint.

Source R S 9 18-17 2, L 1949, c 122, p 491, §2

9:18-21. Cross-examination by deposition in support proceedings. In any proceedings as provided under section 1 (R S 9 18-19) and 2 (R S 9 18-20) hereof, the defendant or plaintiff shall have the right to cross-examine any person whose testimony or report has been forwarded or filed in such proceedings, by deposition or in such other manner according to law as the court or a judge or a justice thereof may order.

Source R S 9 18-17 3, L 1949, c 122, p 491, §3, R S 9 18-17 3, L 1949, c 122, p 491, §4

9:18-22. Interrogatories or depositions within or without state in support proceedings. In any proceedings as provided in section 2 (R S 9 18-20) hereof, the juvenile and domestic relations court may order interrogatories or depositions to be taken within or without the state, pursuant to the provisions of law applicable to a court of record

9:18-23. Orders for support of children notwithstanding separation or divorce of parents. Orders for the support of children may be made or entered pursuant to the provisions of this act (R S 9 18-19 to 9 18-27) irrespective of a decree of legal separation of the parents or the dissolution of the marriage by a judgment of divorce or annulment

Source R S 9 18-17 5, L 1949, c 122, p 492, §5

9:18-24. Receipt and transmission of support money. All sums received by or on behalf of the juvenile and domestic relations court of any county of this state, pursuant to any order of support made under the provisions of section 2 of this act (R S 9 18-20), shall be forthwith transmitted to the court of the jurisdiction where the wife, child, and poor relative, or any of them, resides, to be paid over for the support of such persons.

Source R S 9 18-17 6, L 1949, c 122, p 492, §6

9:18-25. Orders, power to make. In any proceedings as provided in this act (R S 9 18-19

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to 9 18-27), the juvenile and domestic relations court may make any order necessary to carry out and enforce the provisions of this act in like manner and with like effect as if such court had jurisdiction over the persons of the wife, child, and poor relative, or any of them, seeking support and of the person legally liable therefor
Source R S 9 18-17 7, L 1949, c 122, p 492, §7

9:18-26. Costs and disbursements. Disbursements made or incurred in proceedings provided for by this act (R S 9 18-19 to 9 18-27), shall, in the discretion of the court, be taxed against the defendant.
Source R S 9 18-17 8, L 1949, c 122, p 492, §8

9:18-27. Persons complying with support orders relieved of extradition under indictment for desertion or nonsupport. Any legally liable person contemplated by section 1 (R S 9 18-19) hereof, who submits to the jurisdiction of the court of such other state, territory of possession of the United States and complies with any order of support made or entered by such court, shall be relieved of extradition under any indictment for desertion or nonsupport entered in the courts of this state during the period of such submission and compliance
Source R S 9 18-17 9, L 1949, c 122, p 492, §9

9:18-28. Court vested with powers of other courts. The court shall be vested with all the powers, rights and privileges incident to the hearing, determination and final disposition of all cases coming before it under the provisions of this title as are or may be exercised or enjoyed by any other court having jurisdiction over such cases

Any person who fails to comply with the order of the court relative to the terms of probation, condition of bond or surety or any order or decree may be adjudged guilty of contempt or the court may impose the penalty provided by law for the offense
Source R S 9 18-15 and R S 9 18-30

9:18-29. Disposition of juvenile offender. The court or judge on proper cause shown may

a Place the child on probation to the chief probation officer of the county upon such terms as the court may deem to be to the best interest of the child, or

b Commit the child (1) to a public institution established for the care, custody, instruction and reform of juvenile offenders or to any other appropriate institution which is maintained by the state or the county or by any county or municipality in which the child shall reside or have a settlement, (2) to any other like institution commitment to which may be authorized by law, (3) to the care, custody and control of the state board of children's guardians and such

commitment shall have the same force and effect of a commitment made under the provisions of chapter 5, Title 30, Revised Statutes
Source R S 9 18-31, as am L 1946, c 77, p 270, §4

9:18-30. Offenses affecting children; orders of court to protect welfare of child. The court shall have power to make such decree or order or render such judgment as will protect the interests and welfare of the child, in any particular case, in lieu of the penalties now provided by law for violation of laws affecting a minor child, and shall have full power to enforce such decree or order by proceeding for contempt of court
Source R S 9 18-33

9:18-31. Adjudication against juvenile offender; no disabilities to be imposed; adjudication inadmissible as evidence. No adjudication upon the status of a child shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall a child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction

The disposition of a child or any evidence given in the court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence be held against the child's record in any future civil service examination, appointment or application
Source R S 9 18-32

9:18-32. Referees; proceedings before. The judge may appoint a probation officer or other suitable person to act, without compensation for such service, as referee to hear cases coming within the provisions of this subtitle

It shall be unlawful for any person other than the referee appointed or the juvenile domestic relations court judge or the county court judge hearing juvenile matters to hold hearings concerning any children coming within the provisions of the juvenile and domestic relations court act
Source R S 9 18-34 and R S 9 22-10

9:18-33. Appeals in juvenile cases. An appeal may be taken in juvenile cases from any final order or judgment of the juvenile and domestic relations court to the appellate division of the superior court in the manner provided for appeals from the county courts of the respective counties.
Source R S 9 18-37

9:18-34. Expenses. All expenses incurred in complying with the provisions of this subtitle shall be a county charge
Source R S 9 18-36

9:18-35
to

9:18-41. See proposed additional legislation for new article 5

PROPOSED REVISION

Title 10. CIVIL RIGHTS

10:1-7. Action for penalty; costs; taxation and determination; payment out of judgment. The aggrieved party or parties in any action authorized by section 10 1-6 of this title may institute said action in the name of the state of New Jersey. If judgment is awarded in favor of the plaintiff in such action, the aggrieved party shall be paid out of the judgment so re-

covered, the costs incurred in prosecuting such action, according to a bill of costs to be taxed as hereinafter provided

The bill of costs shall be taxed by the clerk of the county district court, to be taxed as for civil action for tort in said court

Source. R S 10 1-7

PROPOSED REVISION

Title 11. CIVIL SERVICE

11:1-13. Disobedience to subpoena; refusal to testify; commitment. In case of a disobedience to or neglect of a subpoena issued by the commission pursuant to section 11 1-12 of this title or a refusal to testify or to produce books or papers relevant to an investigation, inquiry or hearing, the commission may apply to the county court for an order to show cause why the person so disobeying or refusing should not be held in contempt, and upon the hearing, if no sufficient cause for the disobedience is shown, the court shall enforce obedience to such subpoena by imprisonment in the county jail for such period of time, not exceeding 30 days, as the court shall designate, or until the person shall purge himself of the disobedience

Source R S 11 1-13

11:1-14. Fees for witnesses. The fees for the witnesses, mentioned in section 11 1-12 of this title, for attendance and travel shall be the same as allowed witnesses before the county court and shall be paid from the appropriations made to the commission

Source R S 11 1-14

11:4-6. Repeal.

11:20-3. Clerk failing to take proper action; application for court order; summary hearing. If the clerk refuses or neglects to comply with the provisions of section 11 20-1 of this title within the prescribed time, a citizen taxpayer of the county or municipality or the commission, or member thereof, may apply to a judge of the county court of the county in which the county or municipality is located, for an order directing and compelling the submission of the question involved in the complaint, as required by law. The judge shall hear the matter summarily and may examine witnesses under oath and have the

authority essential to determine whether the complaint so filed with the governing body as provided by said section 11 20-1 is in accordance with law.

Source R S 11 20-3

11:22-21. Refusal of certification; legal action to compel. Any officer, clerk, employee or person entitled to be certified by the commission to the comptroller or other fiscal officer or disbursing officer, pursuant to section 11 22-20 of this title, as having been appointed or employed in pursuance of law and of the rules made in accordance with this subtitle, who shall be refused such certification, may maintain a civil action to compel the commission to issue the same in accordance with the rules governing procedure in lieu of prerogative writs

Source R S 11 22-21

11:22-22. Liability of disbursing officer making payments; action for; disbursement of moneys collected. Any sums paid contrary to sections 11 22-20 and 11 22-21 of this title may be recovered from the officer making the appointment contrary to the provisions of law or of the rules made in pursuance thereof, or from an officer signing or countersigning or authorizing the signing or countersigning of a warrant for the payment of the same or from the sureties on his official bond, in a civil action in the county court of any county, by a citizen resident thereof who is assessed for and liable to pay or, within 1 year before the commencement of the action, has paid a municipal, county or school district tax

Moneys recovered in such action shall, when collected, be paid into the treasury of the proper county, municipality or school district thereof, except that the plaintiff therein shall be entitled to receive, for his own use, the taxable costs of

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the action, and 5% of the amount recovered as attorney's fees
Source R S 11 22-22

11:25-4. Review of proceedings; complaint. When a board or body or public officer, official or employee of a county, municipality or school district, operating under this subtitle, violates any of the provisions of this subtitle in selecting persons for employment, or in the designation of any employee for appointment, or in the suspension or removal of employees from office, a citizen of this state may cause a summary review to be had of such illegal or unlawful action, by instituting a civil action in the superior court
Source R S 11 25-4

11:25-5. Order to show cause; hearing; witnesses; process. Upon the institution of the action mentioned in section 11 25-4 of this title,

to a judge of the superior court, such judge may, upon being of opinion that the same presents a meritorious case for consideration, issue an order directed to the members of the board or body or to the public official, officer or employee of such county, municipality or school district so offending, directing them or him, as the case may be, to appear before such judge at such time as he shall fix, to show cause why any action thus complained of shall not be set aside, and for the purpose of having determined by such judge what of right ought to be done by such board, body, public official, officer or employee under the circumstances presented. At such hearing, witnesses may be sworn and any of the parties to the proceeding may be represented by counsel as in other proceedings in the superior court. Process of subpoena shall issue the same as in civil action in the superior court
Source R S 11 25-5

PROPOSED REVISION

Title 12. COMMERCE AND NAVIGATION

12:7-28. Appeal; security. The defendant in any proceeding instituted under this article may appeal from the judgment or sentence of the magistrate to the county court of the county in which such proceedings shall have taken place, provided, the defendant shall, within 10 days after the date of the judgment, deliver to the magistrate a bond to the state, with at least one sufficient surety, or make a cash deposit with him of such amount as the magistrate shall direct, not exceeding the amount of \$500, unless said defendant can himself qualify and justify in real estate security in this state in twice said amount, conditioned to stand to and abide by such further order or judgment as may thereafter be made against said party
Source R S 12 7-28

12:7-29. Hearing on appeal; return of deposit reversal. Whenever an appeal shall be taken as aforesaid, the magistrate shall send all papers and all money, if any, deposited according to the provisions of this article, and all money paid for costs of prosecution, together with a transcript of the proceedings in the case to the county court of the county, which court shall, de novo, and in a summary way, try and determine all such appeals. If the judgment or sentence of the magistrate shall be reversed on such appeal, the county court shall order the return to the defendant of all moneys deposited and all costs of prosecution paid by him
Source. R S 12 7-29

12:7-30. Proceedings on Sunday valid. Proceedings under this article may be instituted on any day of the week, and the institution of such

proceedings on Sunday shall be no bar to the successful prosecution of the same, and any process served on Sunday shall be as valid as if served on any other day of the week

12:7-31. Proceedings in name of state; who may prosecute. All proceedings for the violation of the provisions of this chapter shall be entitled and shall run in the name of the state with the inspector, police officer, constable, or such other person as shall by complaint institute the proceedings, as prosecutor. Any magistrate may, at his discretion, refuse to issue a warrant on the complaint of any person other than an inspector appointed under this chapter until a sufficient bond to secure costs shall have been executed and delivered to the magistrate

12:7-32. Arrest without warrant. Any constable, police officer, or inspector, appointed under the provisions of this chapter, may arrest, without warrant, any person violating, in the presence of such constable, police officer, or inspector, any of the provisions of this chapter and bring the defendant before any magistrate of the county where such offense is committed. The person so offending shall be detained in the office of the magistrate until the officer making the arrest shall make oath or affirmation, which he shall do forthwith, declaring that the person under arrest has violated 1 or more of the provisions of this chapter, and specifying the provision or provisions violated, whereupon such magistrate shall issue a warrant returnable forthwith, and shall proceed summarily to hear or postpone the case, as provided herein. Any such

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constable, police officer, or inspector, upon satisfying himself that such offender is a resident of this state, may, instead of arresting the offender as herein provided, serve upon him a summons in the name of the municipal court having jurisdiction within the provisions of this chapter, directing the offender to appear and answer the charge, or charges, as may then and there be preferred against him. For this purpose the magistrate or the clerks of such courts, respectively, shall provide the officer or officers with a form of summons which, when filled out, executed and issued by the officer or officers in such cases as herein provided, shall be good and effectual, according to the purpose and intent thereof.

Source R S 12 7-32

12:7-34. Arrest in county other than where violation committed; procedure. If any person shall be arrested for a violation committed in a county other than that in which the arrest shall take place, the person so arrested may demand to be taken before a magistrate of a municipal court in the county in which the arrest may have been made, for the purpose of making a cash deposit, or of entering into a recognizance with sufficient surety; whereupon the officer serving the warrant shall take the person so apprehended before a magistrate of a municipal court in the county in which the arrest shall have been made, who shall thereupon fix a day for the matter to be heard before the magistrate issuing the warrant, and shall take, from the person apprehended, a cash deposit or recognizance to the state with sufficient surety or sureties for the appearance of said person at the time and place designated, in accordance with the provisions of this article. The cash deposit or recognizance so taken shall be returned to the magistrate issuing the warrant, to be retained and disposed of by him as by this article provided.

Source R S 12 7-34

12:7-37. Violations of act; complaint; summons or warrant; hearing; jury trial; costs. Any complaint having been made in writing and duly verified that any person has violated any of the provisions of this act, any magistrate of a municipal court in the municipality in which the offense is committed may within 30 days after the commission of said offense issue either a summons or a warrant directed to any constable, police officer or harbor master appointed under the provisions of this act for the appearance or arrest of the person so charged and the complaint shall state what section or provision of the act has been violated by the defendant, and the time, place and nature of said violation, and upon the return of said summons or warrant, the said magistrate shall proceed with or without a jury, to hear and determine the guilt or innocence of such person and upon conviction may impose on the person so convicted the penalty by this act prescribed, together with the cost of prosecution for such offense, and upon

the return day of any summons or warrant issued in accordance with the provisions of this act, said defendant may demand and have a trial by a jury of 12 men, when a demand is made by the said defendant for a trial by jury, said defendant shall pay the costs of all proceedings of said jury trial.

Source R S 12 7-37

12:7-38. Violations of act by corporation; complaint; summons; service; procedure. Such magistrate upon receiving the complaint in writing, of the violation of any provision of this act by any corporation, is hereby authorized and required to issue a summons directed to any constable, police officer or harbor master appointed under the provisions of this act, requiring such corporation to be and appear before such magistrate on the date therein named to answer to said complaint, which said summons shall be served on the president, vice president, secretary, superintendent or manager of said corporation or upon the captain or acting captain of any boat, dredge, scow or other craft by which the offense is committed, at least 5 days before the time and appearance mentioned therein, and thereafter all proceedings shall be the same as against an individual.

Source R S 12 7-38

12:7-39. Adjournment of hearing; appearance bond or cash deposit. Any hearing to be held pursuant to this act shall on the request of the defendant be adjourned for a period not exceeding 30 days from the return date named in any summons or from the return of any warrant or from the date of any arrest without warrant as the case may be. But in such case it shall be the duty of the magistrate to detain the defendant in safe custody unless he shall make a cash deposit or enter into a bond with the state of New Jersey, with at least 1 sufficient surety to all and in amount not to exceed \$500 00, conditioned for his appearance on the day to which the hearing may be adjourned and thence from day to day until the case is disposed of, and such bond if forfeited may be prosecuted by the board of commerce and navigation or by the attorney general of the state of New Jersey in any court of competent jurisdiction and such cash deposit if forfeited shall be paid to said board of commerce and navigation by said magistrate with whom the said cash shall have been deposited, to be by said board paid over to the state treasurer, provided, however, that in lieu of said bond or cash deposit the person under arrest may leave with the magistrate the vessel owned or operated by the said person or corporation at the time of the commission of said offense. L 1938, c 306, p 703, § 5

Source R S 12 7-39

12:7-40. Appeal; bond or cash deposit. The defendant in any proceeding instituted under this act may appeal from the judgment or sentence of the magistrate to the county court of

the county in which such proceedings shall have taken place, provided, said defendant shall within 10 days after the date of said judgment, deliver to the magistrate a bond to the state of New Jersey with at least 1 sufficient surety or make a cash deposit with said magistrate of such amount as the magistrate shall direct, not exceeding the sum of \$500 00, conditioned to stand and to abide by such further order or judgment, as may thereafter be made against said party
Source R S 12 7-40

12:10-15. Injunction to restrain violations. The port warden may obtain an injunction to restrain any person from performing the duties of port warden or acting as such, or in any way interfering with the duties of the port warden or in any other way violating the provisions of this chapter, in accordance with the rules governing civil practice in the superior court
Source R S 12 10-15

PROPOSED REVISION

Title 13. CONSERVATION AND DEVELOPMENT—PARKS AND RESERVATIONS

13:8-20. Rules and regulations; violation; penalty; recovery. The board shall have power to make rules and regulations for the government and use of all forest park reservations, which rules and regulations shall be plainly printed and posted within all such reservations. Any person violating any rule or regulation of the board so printed and posted shall be liable to a penalty of \$10 00, to be recovered in an action at law in a suit by the board before a county district court. All penalties so recovered shall be paid to the secretary of the board, and by him paid to the state treasurer
Source R S 13 8-20

13:9-30. Jurisdiction; complaint; process. Every county district court or municipal court may, on complaint made under oath or affirmation that any person has violated any of the provisions of this chapter, issue process, in the name of the board of conservation and development, as prosecutor for the use of the state of New Jersey. The oath or affirmation, if made by a firewarden or by a member or officer of the board, may be upon information and belief
Source R S 13 9-30

13:9-32. Summary hearing; judgment. Upon the return of the process, as provided by section 13 9-31 of this title, or at any time to which the trial has been adjourned, the court shall summarily hear the testimony and give judgment without a jury and without the filing of pleadings, either for the prosecutor for the penalty and costs or for the defendant
Source R S 13 9-32

13:9-33. Form of judgment.
Note of Reporter This should be included in the official forms

13:9-34. Adjournment of hearings. The judge of the district court or magistrate of the municipal court, before whom a prosecution for a violation of the provisions of this chapter is had,

may adjourn the hearing thereof from time to time
Source R S 13 9-34

13:9-35. Appearance bond. When a warrant has been issued in a prosecution for a violation of this chapter, the judge of the district court or magistrate of the municipal court issuing the warrant may require the defendant to enter into a bond, with sufficient surety to the prosecutor in the penal sum of \$200 00, conditioned to appear at the time and place of the hearing or trial, and, in default thereof, may commit the defendant to the common jail of the county, to be there detained until the hearing or trial of the complaint. If a defendant, having given such a bond, shall fail to appear at the time and place set for the hearing or trial, or at the time and place to which the same may be adjourned, the bond shall be delivered to the prosecutor, who may sue thereon. All moneys recovered in an action on such bond shall be paid by the prosecutor into the state treasury
Source R S 13 9-35

13:9-36. Execution on judgment for penalty; body execution. If the judgment be rendered against a defendant as provided by section 13 9-32 of this title, execution shall thereupon be granted by the court rendering the judgment. The execution shall command the officer to whom it is delivered to levy and make the amount of the penalty and costs imposed by the judgment out of the goods and chattels of the defendant, or, for want of sufficient goods and chattels whereon to levy and make the same, to take the body of defendant and convey him to the common jail of the county and deliver him to the keeper thereof, to be there confined until the penalty and costs be fully paid, or until he be discharged by the court by whose authority the execution was issued, or by a judge of the superior court, when such court shall be satisfied that further confinement will not result in the

payment of the judgment and costs, which discharge shall not relieve the defendant so discharged from liability for the payment of the judgment and costs.

Source R S 13 9-36

13:9-37. Commitment on nonpayment of judgment. The court may, either before or after the issuance of execution as provided by section 13 9-36 of this title, commit any defendant failing to pay the amount of the judgment entered against him and all costs and charges incident thereto to the county jail for a period not to exceed 90 days, unless an appeal is taken therefrom as provided by section 13 9-39 of this title

Source R S 13 9-37

13:9-38. Docketing judgment; effect; collection. A judgment recovered under the provisions of this chapter may be docketed in the office of the clerk of the county court of the county in which the judgment was obtained. Judgments so docketed shall have a like effect and may be collected in the same manner as judgments of district courts docketed under authority of the provisions of the article above-mentioned

Source R S 13 9-38

13:9-39. Appeal; notice, bond, transcript, hearing and determination. Either the prosecutor or the defendant may appeal from a judgment given under the provisions of section 13 9-32 of this title to the county court of the county in which the judgment was rendered. The appeal shall be taken by filing with the court, who gave the judgment, a notice of appeal, signed by the party appealing or his agent.

If the appeal is by a defendant from a judgment against him, he shall, with his notice of appeal, file a bond, with at least 1 sufficient surety to be approved by the court before whom the conviction was had, in double the amount of the judgment, and conditioned that appellant will appear and prosecute the appeal in the county court and will pay such costs as shall be taxed against him, if the judgment appealed is affirmed

The court rendering the judgment appealed from shall send a transcript of the proceeding, judgment and notice of appeal, together with any bond that may have been filed as required by this section, to the clerk of the county court

The county court shall hear and determine the appeal in the same way and manner as the case was heard by the district or municipal court

Source R S 13 9-39

13:9-40. Stay of execution on appeal. On appeal by a defendant after execution issued, the county court to which the appeal is taken may, upon proof that the notice of appeal and bond have been filed as provided by section 13 9-39 of this title, and upon the filing of the bond with the clerk of the county court and the approval thereof by the court, stay the execution until further order by the court. A rule for the stay shall be entered in the minutes of the county court, and a copy thereof, certified by the clerk of such court, shall be served on the officer holding the execution

Source. R S 13 9-40

PROPOSED REVISION

Title 14. CORPORATIONS, GENERAL

14:5-2. Court order to bring books into state; effect of noncompliance. The superior court may, in a summary proceeding, order any or all of the books of any corporation of this state to be forthwith brought within this state, and kept therein at such place and for such time as may be designated in such order

The charter of any corporation failing to comply with such order may be declared forfeited by the court making such order, and it shall thereupon cease to be a corporation, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order

14:7-8. Right of action for debts; complaint. When the officers, directors or stockholders of any corporation shall be liable to pay its debts, or any part thereof, any person to whom they are liable may have an action against any 1 or more of them, and the complaint shall state

the claim against the corporation and the ground on which the plaintiff expects to charge the defendant personally. The remedies of the person to whom they are liable may include a complaint for an accounting in the superior court.

Note of Reporter. Under the former court system, a remedy in an equitable proceeding was provided as an alternative to an action at law. To preserve the equitable remedy, the final 2 lines are substituted for "bill in chancery". It would not be enough in this instance to substitute "complaint in the superior court" for "bill in chancery" as is done elsewhere in the revision, as "complaint in the superior court" does not suggest the additional equitable remedy the statute intends. Even under a unified procedure, a civil action for a debt, and a civil action for an accounting remain distinct

14:8-43. Issue to replace lost or destroyed certificate. Where a certificate has been lost or destroyed the superior court of the county wherein the principal office of the corporation is located may order the issue of a new certificate therefor on service of process upon the corporation

and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees. The board of directors of a corporation may, however, in its discretion, issue a new certificate in the place of a certificate alleged to have been lost or destroyed without any such court proceeding and either with or without the giving of a bond as aforesaid.

The issue of a new certificate, as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

14:9-3. In case any corporation shall adopt a plan providing for the issue of new stock under paragraphs "a" and "b" of section 14 9-1 of this title, or any plan provided for in paragraph "d" of said section 14 9-1, any stockholder holding stock issued by such corporation before April 15, 1920, not voting in favor of the plan, who, at any time prior to the vote at the meeting of stockholders on the adoption of said plan, shall give to the corporation of which he is a stockholder written notice of his dissent, may, within 30 days after such stockholders' meeting, apply to the superior court on reasonable notice, to be prescribed by such court, to such corporation, for the appointment of 3 disinterested appraisers to appraise the market value of the stock held by such stockholder and issued prior to April 15, 1920, without regard to any depreciation or appreciation thereof in consequence of the adoption of the plan, whose award, or that of a majority of them, when confirmed by such court, shall be final and conclusive on all parties.

The corporation shall pay to such stockholder the value of such stock as aforesaid. On receiving such payment, or on a tender thereof, or in case of any legal disability or absence from the state, on the payment of the award into such court, the stock shall be transferred to the corporation, to be disposed of by the directors or to be retained for the benefit of the remaining stockholders.

In case the award is not paid within 30 days from its filing and confirmation by the court and notice thereof given to the corporation, in the manner aforesaid, the amount of the award shall be a judgment against the corporation, and may be collected as other judgments in such court are collected. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise.

The charges and expenses of the appraisers and appraisal as approved by the court shall be paid by the corporation.

The corporation may, at any time before the proceedings hereinbefore mentioned are instituted or completed, elect to permit the dissenting stockholder to subscribe for his proportionate share of such new stock issued under paragraphs "a" and "b" of section 14 9-1 of this title, in which event such proceedings shall not be instituted, or, if instituted, shall be terminated upon the payment of the appraisal expenses as aforesaid by the corporation.

2 This act shall take effect immediately.

Approved and effective July 3, 1950

14:10-2. Effect of failure to hold election for directors. If the election for directors of any corporation shall not be held on the day designated therefor by the charter, certificate of incorporation or by-laws, the directors shall cause the election to be held as soon thereafter as may be convenient. No failure to elect such directors at the designated time shall work any forfeiture or dissolution of the corporation, but the superior court or any judge thereof may in a summary proceeding order the election to be held upon the application of any stockholder and may punish the directors for contempt of court for failure to obey the order.

14:10-16. Review of elections by superior court. The superior court, upon application of any person who may complain of any election, or any proceeding, act or matter in or touching the same shall, upon reasonable notice of such intended application to the adverse party, or to those who are to be affected thereby, proceed forthwith, and in a summary proceeding hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter, and thereupon establish the election so complained of, or order a new election, or make such order, and give such relief in the premises as justice may require.

The court may, if the case require it, either adjudicate the rights of the respective parties to the office or franchise in question, or may direct the attorney general to file a civil action in the superior court in lieu of an information in the nature of a quo warranto, under the rules of practice of the court.

14:12-6. Dissenting stockholders of corporations having right to exercise franchise for public use; appraisal of stock; procedure. If any of the corporations authorized by this title to merge or consolidate shall have the right to exercise any franchise, for public use, and any stockholder thereof not voting in favor of such agreement shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in the agreement for merger or consolidation, and at any time prior to the vote

on such merger or consolidation, shall give to the corporation in which he is a stockholder written notice of his dissent, such dissenting stockholder or such consolidated corporation may, at any time within 30 days after the adoption and filing of the agreement of consolidation, apply to the superior court on reasonable notice to be prescribed by the court to such consolidated corporation, or to such dissenting stockholder, as the case may be, for the appointment of 3 disinterested appraisers to appraise the full market value of his stock, without regard to any depreciation or appreciation thereof in consequence of the merger or consolidation.

The award of the appraisers, or that of a majority of them, when confirmed by the court, shall be final and conclusive on all parties, and such consolidated corporation shall pay to such stockholder the value of his stock as aforesaid.

On receiving such payment, or on a tender thereof, or in case of any legal disability or absence from the state, on the payment of such award into the court, such stockholder shall transfer his stock to the consolidated corporation to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders.

If the award is not so paid within 30 days from the filing of such award and confirmation by such court, and notice thereof to be given in the manner aforesaid unto such stockholder or such consolidated corporation, the amount of the award shall be a judgment against such corporation, and may be collected as other judgments in such court are by law collectible.

At the time of appointing the appraisers or at any time thereafter the court may direct the dissenting stockholder to submit his certificate of stock to the clerk of the court for notation thereon of the pendency of the appraisal proceedings, and if the stockholder fails to comply with such direction the court may dismiss the proceedings.

Note of Reporter. R S 14 9-3 was amended in 1950 to provide the same procedure as 14 12-6, although the latter has not been amended since the adoption of the new constitution. The only changes herein made in 14 12-6 conform the procedure under the new rules so as to be identical with 14 9-3.

14:12-7. Dissenting stockholders of corporations not having right to exercise franchise for public use; appraisal of stock; procedure. Upon the merger or consolidation of any 2 or more corporations, which do not have the right to exercise any franchise for public use, into a single corporation, as provided by this title, if any stockholder in any of such merging or consolidating corporations not voting in favor of such agreement of merger or consolidation, shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in the agreement for merger or consolidation, and at any time prior to the vote on such merger or

consolidation, shall give to the corporation in which he is a stockholder written notice of his dissent, such dissenting stockholder, or such consolidated corporation may, at any time within 30 days after the adoption and filing of the agreement of consolidation, apply to the superior court, on reasonable notice to be prescribed by such court to such consolidated corporation for the appointment of 3 disinterested appraisers to appraise the full market value of his stock without regard to any depreciation or appreciation thereof in consequence of the merger or consolidation. Thereafter the proceedings and the rights and remedies of the respective parties shall be the same as is provided in section 14 12-6 of this title in the case of the appointment of appraisers to appraise the market value of stock of dissenting stockholders of corporations enjoying the right to exercise any franchise for public use, and the judgment upon the award as provided for therein shall be a judgment against such consolidated corporation, and shall be a lien on all property and assets acquired by the consolidated corporation from the corporation so merged, subject only to such liens as existed against such property and assets at the time of such merger or consolidation.

At the time of appointing the appraisers or at any time thereafter the court may direct the dissenting stockholder to submit his certificate of stock to the clerk of the court for notation thereon of the pendency of the appraisal proceedings, and if the stockholder fails to comply with such direction the court may dismiss the proceedings.

14:13-7. Superior court may continue directors as trustees or appoint receiver. When any corporation shall be dissolved in any manner, the superior court, on application of any creditor or stockholder at any time, may either continue the directors trustees as aforesaid, or appoint 1 or more receivers for the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits necessary or proper for such purposes, and to appoint agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of its unfinished business.

The powers of such trustees or receivers may be continued as long as the court shall think necessary for such purposes.

The superior court shall have jurisdiction of such application and of all questions arising in the proceedings thereon, and may make such orders and decrees therein as justice and equity shall require.

14:13-11. Limitation of time for creditors to present claims. When a corporation of this state has been dissolved and is in process of being

wound up either by trustees in dissolution or a receiver under the provisions of this chapter, the superior court may, upon the motion of the trustees or the receiver, make an order fixing a time within which all creditors or others having claims or demands against the corporation shall bring in the same

Upon the expiration of the time limited by the order, all creditors or others having demands or claims against the corporation who have not brought in their claims or demands within the time so limited shall be forever barred from any action therefor or on account thereof against the trustees in dissolution, or the receiver and against the corporation

14:13-14. Continuance of corporation after dissolution, etc., for purpose of defending action; service of process. In any action, suit or other legal proceeding commenced in any court of this state against a domestic or foreign corporation, or to which such corporation shall be a party defendant, where the charter of such corporation has heretofore expired or shall hereafter expire by its own limitation, or has heretofore been or shall hereafter be forfeited, dissolved or annulled by the legislature or in any other manner, such corporation shall continue a body corporate for the purpose of defending such suit, action or other legal proceeding, and service of a summons, subpoena, citation or other process for appearance issued out of any court may be made upon such corporation by serving the same on such person as was, at the time of such expiration, forfeiture, dissolution or annulment, the president or secretary of such corporation, or the agent in charge of the principal office of such corporation, or the designated registered agent of such corporation for this state, as provided by the rules of the superior court then service of a summons may be made upon such corporation by serving the secretary of state, and such service shall be effective to all intents and purposes as if made upon such person as was at the time of such expiration, forfeiture, dissolution or annulment, the president or secretary of such corporation or the agent in charge of the principal office of such corporation or the designated registered agent of such corporation for this state, and within 2 days after such service upon the secretary of state as aforesaid, it shall be the duty of the secretary of state to notify such corporation thereof, by letter directed to such corporation at its registered office, in which letter shall be inclosed a copy of the process or other papers served, and it shall be the duty of the plaintiff, in any action in which said process shall be issued, to pay to the secretary of state, for the use of the state, the sum of \$3 00, which said sum shall be taxed as a part of the taxable costs in said suit if the plaintiff prevails therein, the secretary of state shall keep a book to be called the "process book",

in which shall be recorded alphabetically, by the name of the plaintiff and defendants therein, the title of all causes in which process has been served upon him, the teste of the process so served and the return day thereof, and the date and hour when such service was made; and such service made in any manner aforesaid shall be good, legal and effective for all intents and purposes As amended L 1938, c 290, p 628, §1

14:13-15. Dissolution when directors equally divided on management; petition; schedule; application of existing laws. Every corporation organized under Title 14 of the Revised Statutes may be dissolved by the decree of the superior court when it is made to appear that the corporation has an even number of directors who are equally divided respecting the management of its affairs, and that the voting shares of such corporation are equally divided into 2 independent ownerships or interests and one-half thereof is owned or controlled by persons favoring the course or views of part of the directors, and one-half is owned or controlled by persons favoring the course or views of the other directors, or that the persons owning or controlling the voting shares are unable to agree on, or vote for, the election of a board of directors consisting of an uneven number, and, in either such event, the holders of shares entitling them to exercise one-half or more of the voting power shall have voted for such dissolution, or shall have agreed in writing thereto, or shall join in filing the complaint for dissolution The complaint for dissolution may be filed by one-half of the directors when there is an even number of directors who are unable to agree as to management, if the holders of one-half or more of the shares have voted for or agreed in writing to such dissolution, or it may be filed by the persons holding one-half of the voting shares when such persons are unable to agree with the persons holding the other half of such shares as heremabove provided Whenever shares, the holders of which are entitled to petition for dissolution, shall be deposited subject to the control of a committee which is authorized by the deposit agreement to represent depositing shareholders with respect to dissolution proceedings, the complaint may be filed by such committee or the majority of the members thereof

The provisions of chapter 13 of Title 14 of the Revised Statutes shall be applicable hereto, except so far as they be inconsistent with the provisions hereof L 1938, c 303, p 697, §1

14:14-3. Injunction and receiver; application to superior court. When any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders,

PROPOSED REVISION OF SECTIONS OF OTHER TITLES

any creditor, or any stockholder who owns at least 10% of the capital stock of the corporation, may, by complaint setting forth the facts and circumstances of the case, apply to the superior court for an injunction and the appointment of a receiver or receivers or trustees pursuant to the rules of court relating to actions on order to show cause in lieu of summons

If upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders, it may enjoin the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its real or personal property whatsoever, except to a receiver appointed by the court, until the court shall otherwise order

14:14-1. Directors' duties on insolvency; stockholders' meeting. When any corporation shall become insolvent, the directors, within 10 days thereafter, shall call a meeting of the stockholders, and lay before them for inspection and examination all its books of accounts, by-laws and minutes, and exhibit a full and true statement of all its estate, funds and property, and of all the debts due and owing to it, and by whom, and of all the debts owing by it, and to whom, as far as the directors can at that time make out the same, so as to exhibit to the stockholders a full, fair and true account of the situation of the affairs of the corporation
Source R S 14 14-1

14:14-2. Conveyances, assignments or transfers after insolvency or in contemplation of insolvency void as against creditors; bona fide purchasers; exceptions. When any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, neither the directors nor any officer or agent of the corporation shall sell, convey, assign or transfer any of its real or personal property, choses in action, rights or credits, nor shall they or any of them make any such sale, conveyance, assignment or transfer in contemplation of insolvency.

Any such sale, conveyance, assignment or transfer shall be null and void as against creditors, except that a bona fide purchase for a valuable consideration, before the corporation shall have actually suspended its ordinary business, by any person without notice of such insolvency or of the sale being made in contemplation of insolvency, shall not be invalidated or impeached. The provisions of section 14 14-2 shall not apply to any sale, conveyance, assign-

ment or transfer hereafter made to the reconstruction finance corporation, or to any federal reserve bank, or to any bank being a member of the federal reserve system, or to any other corporation under state or federal supervision, as security for the repayment with interest of any sum or sums of money to be loaned or advanced to such corporation at or subsequently to the time of the making of such sale, conveyance, assignment or transfer As amended
Source R S 14 14-2

14:14-3. Injunctive order and receiver. When any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, any creditor, or any stockholder who owns at least 10% of the capital stock of the corporation, may, by complaint in a civil action in the superior court setting forth the circumstances of the case, demand an injunctive order and the appointment of a receiver

If upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders, it may enjoin the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its real or personal property whatsoever, except to a receiver appointed by the court, until the court shall otherwise order
Source R S 14 14-3

14:14-4. Receiver; appointment; removal; vacancies. The court, at the time of making the injunctive order, or at any time thereafter, may appoint a receiver or receivers or trustees for the creditors and stockholders of the corporation. The court may remove any receiver or trustee and appoint another or others in his place, or fill any vacancy which may occur
Source R S 14 14-4

14:14-5. "Receiver" construed. The word "receiver" as used in this article shall be construed to include receivers and trustees appointed as provided in this article.
Source R S 14 14-5

14:14-6. Receiver; bond; oath; filing. Every receiver shall, before acting, enter into such bond and comply with such terms as the court may prescribe, and take and subscribe the following oath or affirmation "I, do swear (or affirm) that I will faithfully, honestly and impartially execute the powers and trusts reposed in me as receiver, for the creditors and

PROPOSED REVISION OF SECTIONS OF OTHER TITLES

stockholders of the, which oath or affirmation shall be filed in the office of the clerk of the superior court within 10 days after the taking thereof

Source R S 14 14-6

14:14-7. Powers of receiver; payment of debt without notice of insolvency. The receiver shall have full power and authority to demand, sue for, collect, receive and take into his possession all the real and personal property of every description, rights, credits, books and papers of the corporation, and to institute a civil action for the recovery of any property, damages or demands existing in favor of the corporation, and to sell, convey and assign all such estate, rights and interest, and shall hold and dispose of the proceeds thereof under the directions of the superior court

He may, in his discretion, compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsible to the corporation at the time of its insolvency or suspension of business or afterwards, upon such terms and in such manner as he shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person, allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity.

A debtor who shall have in good faith paid his debt to the corporation without notice of its insolvency or suspension of business, shall not be liable therefor

Source R S 14 14-7

14:14-8. Action by majority valid. Everything required by this title to be done by receivers or trustees shall be good and effectual, to all intents and purposes, if performed by a majority

Source R S 14 14-8

14:14-9. Property, franchises, etc., to vest in receivers or trustees; insolvent foreign corporations.

a. All the real and personal property of a corporation for which a receiver shall be appointed under the provisions of this chapter, wheresoever situated, and all its franchises, rights, privileges, credits and effects shall, upon the appointment of a receiver or trustee, or receivers or trustees, forthwith vest in him or them, and the corporation shall be divested of the title thereto

b All the real and personal property of an insolvent foreign corporation, and all its franchises, rights, privileges, credits and effects, within the state shall, upon the appointment of a receiver or receivers, or trustee or trustees by the superior court of New Jersey, or other court of competent jurisdiction of this state, forthwith vest in him or them, and the corporation shall be divested of the title thereto

c All trustees or receivers appointed prior to March 26, 1935, by said court for an insolvent

foreign corporation, unless otherwise expressly provided in the order of appointment, be and they are hereby vested with title to all the real and personal property, and all the franchises, rights, privileges, credits and effects of said insolvent foreign corporation, situated within the state, and are empowered, subject to the control of said court, to pledge, sell, assign, transfer, convey and otherwise deal with said real and personal property, franchises, rights, privileges, credits and effects

d All deeds of conveyance, bills of sale and other documents or instruments of transfer of title to real or personal property, rights or effects, made and delivered prior to March 26, 1935, by all the trustees or receivers appointed prior to said date by said court for an insolvent foreign corporation, or which may be delivered after said date by said trustees or receivers, subject to the control of said court, and all proceedings taken prior to said date, and then pending, by said trustees or receivers, are hereby validated and confirmed to the same extent as if the title to said real and personal property, rights and effects were vested in the said trustees or receivers at the time of their appointment

e Each subsection of this section is remedial, and shall be considered as separate and independent, and if any subsection or provision of this section shall be declared unconstitutional, the remaining subsections or portions of this section shall not be affected thereby.

Source R S 14 14-9

14:14-10. Reconveyance of property on payment of debts; dissolution. When a receiver has been appointed as aforesaid and it shall afterwards appear that the debts of the corporation have been paid or provided for, and that there remains or can be obtained by further contribution sufficient capital to enable it to resume its business, the superior court may, in its discretion, a proper case being shown, direct the receiver to reconvey to the corporation all its property, franchises, rights and effects, and thereafter the corporation may resume control of and enjoy the same as fully as if the receiver had never been appointed

In every case in which the superior court shall not direct such reconveyance, it may, in its discretion, enter judgment dissolving the corporation and declaring its charter forfeited and void

Source R S 14 14-10

14:14-11. Examination of witnesses. The receiver may send for persons and papers and examine, on oath or affirmation, which oath or affirmation he may administer, any persons, including the creditors and claimants, and the president, directors and other officers and agents of the corporation, respecting its affairs and transactions, its real and personal property of every kind, its debts, credits, obligations, contracts and liabilities, and the claims against it

If any person shall refuse to be sworn or

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affirmed, or to answer the questions put to him, or refuse to declare the whole truth touching the subject matter of the examination, the superior court may, on report by the receiver, commit such person to prison, to remain until he shall submit himself to be examined, and pay all the costs of the proceedings against him
Source R S 14 14-11

14:14-12. Power to search for and take possession of property. The receiver, with the assistance of a peace officer, may break open, in the daytime, any receptacle, or any door, building or part thereof, or any other place of the corporation where any of its personal property whatever, books, papers or other writings or effects have usually been kept, or shall be, and take possession of the same and of the real estate belonging to the corporation
Source R S 14 14-12

14:14-13. Blank

14:14-14. Limitation of time to present claims. The superior court may limit the time within which creditors shall present and make proof to the receiver of their respective claims against the corporation, and may bar all creditors and claimants failing so to do, within the time limited, from participating in the distribution of the assets of the corporation. The court may also prescribe what notice, by publication or otherwise, shall be given to creditors of such limitation of time
Source R S 14 14-14

14:14-15. Presentation of claims; examination. Every claim against an insolvent corporation shall be presented to the receiver in writing and upon oath, and the claimant, if required, shall submit himself to such examination and produce such books and papers relating thereto as the receiver shall direct. The receiver may examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the same, or any part thereof, and notify the claimants of his determination
Source R S 14 14-15

14:14-16. Blank

14:14-17. Appeal to court. Any person aggrieved by the proceedings or determination of the receiver in the discharge of his duty, may pursuant to the rules of court, appeal to the superior court.

Source R S 14 14-17

Note of Reporter Rule 3 66-7 should be amended to include corporations

14:14-18. Substitution of receiver as party to actions. The receiver shall, upon application by him, be substituted as party plaintiff in place of the corporation in any action pending at the time of his appointment.
Source R S 14 14-18

14:14-19. Action not to abate on death of receiver. No action against a receiver of a corpo-

ration shall abate by reason of his death, but upon suggestion of the facts on the record, shall be continued against his successor, or against the corporation if no new receiver is appointed
Source R S 14 14-19

Note of Reporter This statute is preserved notwithstanding Rule 3 25, because of the provision allowing the action to proceed against the corporation where no new receiver is appointed

14:14-20. Sale of corporate property. Where property of an insolvent corporation is at the time of the appointment of a receiver encumbered with mortgages or any other lien, the legality of which is questioned, and the property is of a character materially to deteriorate in value pending the litigation, the superior court may order the receiver to sell the same, clear of encumbrances, at public or private sale, for the best price that can be obtained, and pay the money into court, there to remain subject to the same liens and equities of all parties in interest as was the property before the sale, to be disposed of as the court shall direct
Source R S 14 14-20

14:14-21. Laborers' and workmen's liens; priority of liens. In case of the insolvency of a corporation all persons doing labor or service of any character, in the regular employment of the corporation, shall have a lien upon its assets for the wages due them respectively for all labor, work and services performed within 2 months next preceding the date when insolvency proceedings shall be actually instituted against such insolvent corporation

Such lien shall be prior to all other liens that can or may be acquired upon the assets, except that of (1) a chattel mortgage recorded more than 2 months next preceding the date when proceedings in insolvency shall have been actually instituted against the insolvent corporation, (2) a chattel mortgage for money loaned or for goods purchased within 2 months next preceding the date when such proceedings in insolvency shall have been actually instituted, recorded within such period of 2 months, and (3) mortgages upon the real estate of the insolvent corporation
Source R S 14 14-21

14:14-22. Compensation of receiver; expenses of administration. Before distribution of the assets of an insolvent corporation among the creditors or stockholders, the superior court shall allow a reasonable compensation to the receiver for his services and the costs and expenses of the administration of his trust, and the costs of the proceedings in the court, to be first paid out of the assets
Source R S 14 14-22

14:14-23. Distribution of assets; priority of creditors. After payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionally to the amount of their respective debts, excepting mort-

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gage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors. The creditors shall be entitled to distribution on debts not due, making in such case a rebate of interest, when interest is not accruing on the same.

The surplus funds, if any, after payment of the creditors and the costs, expenses and allowances aforesaid, and the preferred stockholders, shall be divided and paid to the general stockholders proportionally, according to their respective shares.

Source R S 14 14-23

14:14-24. Applicable in injunctions. In all cases in which the superior court may issue an injunctive order under section 14 14-3 of this title, sections 14 14-4 to 14 14-23 of this title shall apply, notwithstanding any language in any such sections appearing to limit their application to cases in which the appointment of a receiver is made on the ground of insolvency.

Source R S 14 14-24

14:14-25. Effect of appointment of receiver on prior levies, judgments, attachments or other liens. All levies, judgments, attachments or other liens obtained through legal proceedings against a corporation at any time when the corporation shall be insolvent, and within 4 months prior to the filing of a complaint against it for the appointment of a receiver under this chapter shall be deemed null and void in case a receiver shall be appointed by the court and the assets of such corporation distributed in such proceedings.

The property affected by the levy, judgment, attachment or other lien shall be deemed wholly discharged and released from the same, and shall pass to the receiver as a part of the estate of the corporation, unless the court shall order that the right under such levy, judgment, attachment or other lien shall be preserved for the benefit of the estate, whereupon the same may pass to and shall be preserved by the receiver for the benefit of such estate.

The court may order such conveyance as shall be necessary to carry the purpose of this section into effect, but nothing herein contained shall destroy or impair the title obtained by such levy, judgment, attachment or other lien of a bona fide purchaser for value who shall acquire the same without notice or reasonable cause for inquiry.

Source R S 14 14-25

14:14-26. Effect of appointment of receiver on subsequent levies, judgments, attachments or other liens. After the filing of a complaint in a civil action for the appointment of a receiver under the provisions of this chapter, if, as a result of such proceedings, a receiver is appointed and the assets of the corporation distributed in the proceedings, no lien or priority shall be obtained by levy, judgment, attachment or otherwise, and all attempted levies, judgments, attachments or other liens, by virtue of legal

proceedings, shall be null and void as against the receiver.

Source R S 14 14-26

14:14-27. Title of receiver relates back. The title and right of a receiver appointed under the provisions of this chapter shall be held to relate back to the time of the filing of the complaint, for the purpose of avoiding liens and preferences.

Source R S 14 14-27

14:14-28

to

14:14-30. Blank

Source R S 14 14-30

14:14-31. Powers of master to take testimony. Any master appointed in connection with any action under this chapter may take testimony either within or without the state, and if without the state he shall have the same right to apply to courts of other jurisdictions for compulsory process to obtain the attendance of witnesses as any party has under any law of this or any other state. He may also apply to the court for letters rogatory.

Source R S 14 14-31

Note of Reporter. The first paragraph of R S 14 14-31 is covered by Rules 3 53-3 and 3 53-4(b).

14:14-32. Blank

Source R S 14 14-32

14:14-33. Blank

Source R S 14 14-33

14:14-34. Depositions. Certified copies of the proceedings before the master, including the depositions, shall be admitted as evidence with like force and effect as certified copies of the records of the superior court are or may be admitted as evidence.

Source. 14 14-34, 14 14-35.

Note of Reporter. Repeal. The authority of the master should be the same as that provided under Rule 3 53.

14:14-36. Reorganization by stockholders. When a majority in interest of the stockholders of a corporation, for which a receiver or trustee has been appointed, shall have agreed on a plan for the reorganization of the corporation and a resumption by it of the management and control of its property and business, the corporation may, with the consent of the superior court, upon the reconveyance to it of its property and franchises, mortgage the same for such amount as may be necessary for the purposes of the reorganization, and may issue bonds or other evidences of indebtedness or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization.

Source R S 14 14-36

14:14-37. Reorganization by purchasers of corporate property. When the property and franchises of a corporation of this state, except steam railroad, canal, turnpike or plank road

companies, shall be sold and conveyed under or by virtue of a judgment of the superior court of this state, or of the district court of the United States in and for the district of New Jersey, and an execution issued thereon, to satisfy any mortgage debt, judgment, or other encumbrance thereon, such sale and conveyance, duly made and executed, shall vest in the purchaser thereof all the right, title, interest, property, possession, claim and demand in law and equity of the parties to the civil action in which the judgment was made, of, in and to the property so sold and its appurtenances and also of, in and to the corporate rights, liberties, privileges and franchises of such corporation, but subject to all the conditions, limitations, restrictions and penalties of such corporation concerning the same

Source R S 14 14-37

14:14-38. Purchasers constituted body corporate; rights, restrictions, etc. Such purchaser and his associates, not less than 3 in number shall thereupon be a new corporation, by the name they shall select, and shall be deemed the stockholders of the capital stock of such new corporation, in the ratio and according to the amount of the purchase money respectively contributed by them, and shall be entitled to all the rights, liberties, privileges and franchises and be subject to all conditions, limitations, restrictions and penalties of the corporation whose property and franchises shall have been so sold and conveyed, which were contained in the act or acts by or under which such corporation was created, and the supplements thereto, so far as the same were in force and unrepealed at the time of the sale and conveyance

Source R S 14 14-38

14:14-39. Meeting for organization of new corporation. The persons for or on whose account any such property and franchises may have been purchased, shall meet at the county seat of the county wherein the sale may have been made, within 30 days after the conveyance made by virtue of such process or judgment shall have been delivered, written notice of the time and place of such meeting having been given to each of such persons at least 10 days before the meeting, and shall organize the new corporation by electing a president and board of directors, to hold office until the first Monday of May succeeding the meeting, when, and annually thereafter on that day a like election shall be held for a president and directors to serve for 1 year

Source R S 14 14-39

14:14-40. Corporate name and seal; capital stock; preferred stock. At the meeting such persons shall adopt a corporate name and seal, determine the amount of the capital stock of the corporation, and may make and issue certificates of stock in shares of \$50 each

The corporation may then, or at any time thereafter, create and issue preferred stock to

such an amount and at such times as it may deem necessary

Source R S 14 14-40

14:14-41. Certificate of reorganization; filing; evidence. The new corporation shall, within 1 month after its organization, make a certificate thereof, under its common seal and signed by its president, setting forth

- a The date of its organization;
- b The name so adopted,
- c The amount of capital stock, and
- d The names of its president and directors.

Such certificate shall, within said 1 month, be transmitted to the secretary of state, to be filed in his office and there remain of record. A certified copy of the certificate so filed shall be evidence of the corporate existence of the new corporation

Source R S 14 14-41

14:14-42. Borrowing money; bonds secured by mortgage. Any corporation created under sections 14 14-37 to 14 14-41 of this title may borrow such sums of money as may be necessary for the accomplishment of its objects, not exceeding at any one time the total amount of the authorized capital stock of the corporation or any increase thereof

The corporation may secure the repayment of the whole or any part thereof, may issue bonds registered or with coupons or interest certificates attached thereto, or both, secured by a mortgage of any or all of its franchises, real or personal property, including stocks and securities of the corporation or of any other corporation whose stocks or securities it owns.

Such mortgage may be recorded as mortgages of real estate are or hereafter may be by law required to be recorded in the office of the clerk or register of deeds of the county in which the property is located and in which the principal office of the corporation is situated, and such record or the lodgment of such mortgage in such clerk's or register's office for record shall have the same force, operation and effect as to all judgment creditors, purchasers or mortgagees in good faith as the record or lodgment for that purpose of mortgages of real estate now have, although such mortgage may not have been executed, proved or recorded as a chattel mortgage.

Source R S 14 14-42

14:14-43. Prior liens; impairment. Nothing contained in this article shall divest or in any manner impair the lien of any prior mortgage or other encumbrance upon the property or franchises conveyed under the sale of such property or franchises, when by the terms of the process or judgment under which the sale has been made, or by operation of law, the sale is made subject to the lien of any such prior mortgage or other encumbrance, and no such sale and conveyance or organization of such new corporation shall in any way affect or impair any rights, in law or

equity, of any person, not a party to the civil action in which the judgment was made, nor of any party, except so far as determined by the judgment

When any trustee shall be made a party to such civil action, and the cestui que trust, for any reason satisfactory to the court in which the action may be, shall not be made a party thereto, the rights and interests of the cestui que trust shall be concluded by such judgment

Source R S 14 14-43

14:14-44. Execution of plan of reorganization; means, powers and authority. Any corporation organized under this title, or organized under other general or special law for purposes permitted by the provisions of this title, or subject to the provisions of this title, a plan of reorganization or an arrangement of which, pursuant to the provisions of the act of congress of July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States", as amended and supplemented (herein referred to as the national bankruptcy act), has been or shall be accepted by creditors and stockholders affected by the plan of reorganization and whose acceptance thereof is requisite to confirmation, and has been or shall be confirmed by the judgment or order of a court of competent jurisdiction, and any such corporation which is a registered holding company or a subsidiary thereof, a plan for the simplification or integration of which, or of the holding company system of which such holding company is a part, has been or shall be approved by the securities and exchange commission pursuant to the provisions of section 11 of Title 1 of the act of congress of August 26, 1935, entitled "An act to provide for control and regulation of public utility holding companies, and for other purposes" (herein referred to as the public utility holding company act of 1935), (such plans of reorganization, arrangement, plans of simplification, and plans of integration being collectively referred to in sections 14 14-44 to 14 14-48, inclusive, of this title as plans of reorganization, and the proceedings for the approval or confirmation thereof being therein collectively referred to as reorganization proceedings), may provide adequate means for the execution of the plan of reorganization and shall have full power and authority to put into effect and carry out the plan of reorganization and the judgments and orders of the securities and exchange commission, court or judge, if any, relative thereto and may take any proceeding and do any act provided in the plan of reorganization or directed by such judgments and orders, without further action by its directors or stockholders. Such means may be provided, such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such judgments or orders, by the trustee or trustees of such corporation, appointed in the reorganization proceedings, or a majority thereof, or if none be appointed and acting, by the

directors or a majority of them, or by an officer or officers of the corporation, or by a master or other representative appointed by the securities and exchange commission, court or judge, with like effect as if provided, exercised and taken by unanimous action of the directors and stockholders of the corporation

Source R S 14 14-44, as am L 1948, c 134, p 857, §1

14:14-45. Powers of reorganized corporation enumerated. Such corporation may, in the manner above provided, but without limiting the generality or effect of the foregoing, alter, amend or repeal its by-laws, constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office, amend its certificate of incorporation, and make any change in its capital or capital stock, or any other amendment, change, or alteration, or provision, authorized by sections 14 11-1 to 14 11-5 of this title, dissolve or be dissolved, merge or consolidate as permitted by section 14 12-1 of this title, in which case, however, no stockholder shall have any statutory right of appraisal of his stock, change the location of its principal office and remove or appoint an agent to receive service of process, authorize and fix the terms, manner and conditions of, the issuance of bonds, debentures or other obligations convertible into stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for stock of any class, lease its property and franchises to any corporation, if permitted by law, sell, exchange or otherwise dispose of all or substantially all of its property, assets and franchises, in which case, however, no stockholder shall have any statutory right of appraisal of his stock, provide for and adopt any plan authorized by article 1 of chapter 9 of this title (14 9-1 et seq), in which case, however, no stockholder shall have any statutory right of appraisal of his stock, or come under and become, subject to the provisions of this title

Source R S 14 14-45, as am L 1948, c 134, p 858, §2

14:14-46. Certificate, agreement, etc.; execution; contents; filing. A certificate, executed as hereinafter provided, of any amendment, change or alteration, or of dissolution, or any agreement of merger or consolidation, made by such corporation pursuant to the foregoing provisions, shall be filed in the office of the secretary of state, and shall thereupon become effective in accordance with its terms and the provisions hereof. Such certificate, agreement of merger or other instrument shall be made, executed and acknowledged, as may be directed by such judgments or orders, by the trustee or trustees appointed in the reorganization proceedings, or a majority thereof, or, if none be appointed and acting, by officers of the corporation, or by a master or other representative appointed by the

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securities and exchange commission, court or judge, and shall certify (1) that provision for the making of such certificate, agreement or instrument is contained in the plan of reorganization or in a judgment or order of the securities and exchange commission, court or judge relative thereto; (2) that, in the case of a plan of reorganization under the national bankruptcy act, such plan of reorganization has been accepted by creditors and stockholders affected thereby and whose acceptance is requisite to confirmation, as provided in the national bankruptcy act; and (3) that the plan of reorganization has been confirmed, as provided in the national bankruptcy act or approved as provided in the public utility holding company act of 1935.

Source R S 14 14-46, as am L 1948, c 134, p 859, §3

14:14-46.1. Powers and duties of public utility commissioners not restricted. Nothing in the act to which this act is a supplement shall be construed to abrogate, limit or restrict the authority, powers and duties of the board of public utility commissioners.

Source L 1948, c 417, p 1646, §1

Note of Reporter Title of act

A supplement to "An act to authorize proceedings and acts by or on behalf of corporations organized

under, or for purposes permitted by, or subject to the provisions of, Title 14 of the Revised Statutes, for the execution of plans of reorganization or arrangements under the National Bankruptcy Act and for the execution of plans for simplification or integration under the Public Utility Holding Company Act of 1935, and to amend sections 14 14-44, 14 14-45 and 14 14-46 of the Revised Statutes", approved June 12, 1948 (P L 1948, c 134) L 1948, c 417, p 1646

14:14-47. Provisions to cease to apply upon final decree. The provisions of sections 14 14-44 to 14 14-48 of this title shall cease to apply to such corporation upon the entry of a final judgment in the reorganization proceedings closing the case and discharging the trustee or trustees, if any.

Source R S 14 14-47

14:14-48. Filing fees. On filing any certificate, agreement, report or other paper made or executed pursuant to the provisions of sections 14 14-44 to 14 14-48 of this title, there shall be paid to the secretary of state for the use of the state the same fees as are payable by corporations not in reorganization upon the filing of like certificates, agreements, reports or other papers

Source R S 14 14-48

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Title 15. CORPORATIONS AND ASSOCIATIONS NOT FOR PECUNIARY PROFIT

15:14-1. Dissolution of religious, charitable or educational corporations by application to court. Whenever, in the judgment of the board of trustees of a religious, charitable or educational corporation existing under any law of this state, it shall be deemed advisable that the same be dissolved, the board of trustees may, in the name of the corporation, apply to the superior court of New Jersey for a dissolution of the corporation and for the appointment of a receiver or trustee of its estate and effects

If it shall appear to the court, upon inquiry into the matter, that such action may be taken without prejudice to the public welfare, and that it is advisable and best for the corporation that it be dissolved, its affairs settled and its estate and effects divided and distributed among the stockholders, associate owners, creditors and others who may be entitled to the same, the court may enter a judgment to that effect, and may appoint a receiver or trustee

15:14-2. Powers and duties of receiver or trustee; compensation to receiver and counsel. Such receiver or trustee may demand, sue for, collect, receive and take into possession all the property of every description belonging to the corporation at the time of the entry of said

judgment, and may sell, convey, or assign all such property. He shall also have all the powers of receivers or trustees appointed under the law authorizing the appointment of a receiver or trustee in case of insolvent corporations. Said receiver or trustee shall pay into the superior court all the moneys and securities for money arising from such sales, or which may be collected by him from time to time under the order of the court, first deducting the costs of the proceedings in said court, and making to said receiver or trustee and to counsel, such reasonable compensation as the court may deem fit and proper

15:14-3. Disposition of effects. The superior court may make all necessary and proper orders and judgments to settle and wind up the affairs of the corporation, and may distribute its estate, property and effects, or the proceeds thereof, among those entitled thereto. If, at the time of the final judgment of distribution, the owners of any part of said property remain unknown, such part, share or shares shall be retained in the court until the same shall be claimed by the rightful owners

15:5-6. Proceedings if lands to be overflowed

or filled in about on lands of other meadow company. If the lands of a meadow company taking advantage of sections 15 5-3 to 15 5-7 of this title about on the lands of another meadow company, and it shall be necessary to erect a cross bank to protect the adjoining meadow company from the overflow or the fill, the managers of the meadow company so taking advantage of said sections 15 5-3 to 15 5-7, or a majority of them, may apply to the county court of the county in which the lands are located for the appointment of 3 judicious and disinterested men, well acquainted with banked meadows, as commissioners. The commissioners shall be appointed by the court after the giving of such notice of the application as the court prescribes, and when appointed, after giving such notice of the time and place of meeting as the court directs, shall view the premises, hear the parties in interest, may adjourn from time to time, and shall lay out the correct bank required to protect the adjoining meadows and cause the same to be constructed, the cost thereof to be paid by each meadow company in accordance with the assessments made by the commissioners. If the adjoining meadow company refuses to pay its proportion of the assessment, the company taking advantage of said sections 15 5-3 to 15 5-7 shall, in the first instance, pay the cost thereof, and the amount assessed against the adjoining company by the commissioners shall be returned in the report of the commissioners to the county court. The collection of the same by the managers of the company so taking advantage of said sections 15 5-3 to 15 5-7 may be enforced by appropriate process in any competent court. The commissioners shall receive such compensation as said court may order, to be paid by the petitioners.

15:14-7. Religious, educational or charitable corporations or associations; sale or diversion of lands granted for specific purposes; trust to be benefited; application to superior court; use of proceeds of sale. Whenever any lands and tenements shall have heretofore been or may hereafter be granted, conveyed or devised by deed, will or otherwise, to any religious, educational or charitable corporation or association, or to any officers or trustees thereof, upon a trust or trusts that the same shall be held and used for specific uses and purposes, or appropriating the rents, issues and profits of any such lands and tenements to specific uses and purposes, but without power to sell, convey or otherwise dispose of the same, then whenever any corporation, association, officers or trustees shall file a complaint in the superior court and shall make it appear to the satisfaction of the court, that a sale of the whole or any part of such lands and tenements will promote and benefit the trust upon which the same is held; or, whenever it shall be made to appear that such trust will be benefited by devoting the said lands and tene-

ments, or any part thereof, to some use or purpose other than the specific use or trust upon which the same was granted, conveyed or devised or that the proceeds of such sale will when invested increase and enhance the income of such trust. The court may order such lands and tenements, or any part thereof, to be sold by such corporation, association, officer or trustee, free from the limitations of said trust, which sale when made shall be reported to and confirmed by the court, and the proceeds of said sale shall be held upon the same or like conditions, limitations or trusts as were declared in the original trust, or shall be devoted to some use not inconsistent therewith, as the court shall order, or the court may authorize such corporation, association, officers or trustees thereof to use or devote any such lands and tenements, or any part thereof, to some use or purpose other than and not inconsistent with the uses and purposes of the trust upon which the same were granted, conveyed or devised to them.

15:14-8. Investment or reinvestment of proceeds of sale. The court may order such corporation, association, officers or trustees thereof to invest the proceeds of any sale made pursuant to the provisions of section 15 14-7 of this title in such securities as trustees are authorized to invest trust funds, or may, upon due cause shown, order and direct the whole or any part of the proceeds of any sale of such lands and tenements had or to be had by virtue of said section 15 14-7 to be reinvested in other more desirable lands and tenements, the same to be held by such corporation, association, officers or trustees in the same manner and subject to the same conditions, limitations and trusts as were the lands and tenements originally granted, conveyed or devised to them.

15:14-9. Religious associations or corporations and educational corporations; sale or diversion of lands granted for specific purposes; interest of association or corporation promoted; application to superior court; procedure. Wherever lands and tenements have heretofore been, or shall hereafter be, granted, conveyed or devised to any religious association or corporation, or to any corporation formed or existing for the purpose of education, or to officers or trustees of such associations or corporations by deed, will or otherwise, upon condition that the said lands and tenements so granted, conveyed or devised shall be held in trust for specific uses and purposes, and appropriating the rents, issues and profits thereof to specific use, but without power to sell and convey such lands and tenements, and the said association, corporation, or officers or trustees thereof, shall by complaint represent to the superior court that the existing situation and circumstances in the place where the said lands and tenements are located are such that the interests of such association or corporation will be better promoted either by the sale or

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disposal of such lands and tenements, or any part thereof, or by devoting the said lands and tenements or any part thereof to some use or purpose, not inconsistent with the nature and objects of such association or corporation, other than the specific use or trust named in the instrument by which such lands and tenements are conveyed or devised to the association or corporation, the court may authorize and direct such association or corporation to sell or dispose of the said lands or tenements, or any part thereof, or, in the discretion of the trustees or directors of such association or corporation, to devote the said lands and tenements, or any part thereof, to such use or purpose not inconsistent with the nature and objects of the said association or corporation, other than the specific use or trust named in the instrument by which the said lands or tenements are conveyed or devised

15:14-10. Report and confirmation of sale; conveyances; application of proceeds. All sales and dispositions made in pursuance of section 15:14-9 of this title shall be reported by such association or corporation officers or trustees, to the superior court, to be approved before a conveyance shall be executed, and if such sale or disposition be confirmed by the court a conveyance or conveyances shall be executed and delivered to the purchaser or purchasers for the lands and tenements so sold. The purchaser or purchasers shall not be liable to see to the appli-

cation of the purchase money arising from such sales

15:14-11. Investment of proceeds of sale; use for other purposes; report to and approval by court. The proceeds of any sale or sales, made in pursuance of sections 15:14-9 and 15:14-10 of this title, or any part thereof, may, in the discretion of the trustees and directors of such association or corporation, be (1) loaned and invested by such association or corporation, officers or trustees, in such securities as any executor, administrator, guardian or trustee, whose duty it may be to loan the money intrusted to him, may, by law, invest in, or (2) the proceeds of any such sale or sales, or any part thereof, may, in the discretion of the trustees or directors of such association or corporation, be set apart by said association or corporation, officers or trustees, and devoted to such use or uses not inconsistent with the nature and objects of the said association or corporation, or both, as under the existing situation and circumstances in the place where the said lands and tenements so sold are located, will better promote the interests of the said association or corporation, provided, that the determination of the said trustees or directors shall be reported to the court, to be approved before the said proceeds of the said sale or sales shall be invested as aforesaid, or shall be set apart and devoted to such uses as aforesaid.

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Title 16. CORPORATIONS AND ASSOCIATIONS, RELIGIOUS

16:1-26. Disposition of funds for school purposes; petition for disposition. When funds have been given to any persons or corporation for the purpose of maintaining schools or for the support of poor scholars in schools formerly maintained on the property of religious societies, and such schools have ceased to exist, the superior court may, summarily, on the suit of such persons or corporation, inquire into the merits of such application. If it be found impossible to fully carry out and comply with the trust, the court may order payment of the income from such funds to the maintenance of the property of such religious society, or for any other purpose nearest akin to the trust

16:2-20. Extinct church or society defined. Any Baptist church or religious society or any Seventh-Day Baptist church or religious society in this state, which has ceased or failed to maintain religious worship or services, or to use its property for religious worship or services according to the tenets, usages and customs of Baptist

churches in this state, or of Seventh-Day Baptist churches which are members of the Seventh-Day Baptist General Conference, as the case may be, for the space of 2 consecutive years immediately prior to application to the superior court of New Jersey for an order dissolving such church or society, or whose membership has so diminished in numbers, or in financial strength, as to render it impossible or impracticable to maintain religious worship or services, or to protect its property from exposure to waste and dilapidation, or to fulfill the purpose for which it was incorporated, shall be deemed and taken to be extinct, and may be so declared and thereupon dissolved by an order of the court

16:2-21. Disposition of property; proceedings in the superior court. Any member, trustee or officer of the New Jersey Baptist Missionary Convention or of the Seventh-Day Baptist Missionary Society, as the case may be, or any member of such church or society, when duly authorized by the board of managers of said

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New Jersey Baptist Missionary Convention, or the board of trustees of the Seventh-Day Baptist Missionary Society, as the case may be, may make an application to the superior court for such order and for the disposition of the property of such church or society. The court may thereupon proceed in a summary manner to inquire into the merits of such application, after such notice as the court may prescribe. If it shall satisfactorily appear that making the order and disposing of the property is necessary or proper, for any of the causes mentioned in section 16 2-20 of this title, the court shall render final judgment thereon, declaring such church or society extinct, dissolving the same, and transferring to and vesting in the New Jersey Baptist Missionary Convention, or the Seventh-Day Baptist Missionary Society, as the case may be, any property, and the title and possession thereof, which may belong to such church or society, or which may be held in trust for it.

16:12-18. Incorporation. When any diocese now or hereafter created in this state under and by virtue of the authority of the general convention of the Protestant Episcopal church in the United States of America shall desire to incorporate, the convention of the diocese may, at any regular meeting thereof, in which a majority of the parishes belonging thereto are represented by both clerical and lay deputies, declare their desire and intention to become such corporation by resolution. A copy of such resolution, together with a certificate stating the name

of such diocese and the name of its president, secretary and standing committee, which shall consist of not less than 4 clerical and 4 lay members, duly signed by such president and secretary in the presence of a judge of the superior court of New Jersey, shall be filed in the office of the secretary of state. Thereupon such convention shall be a corporation by the name or title stated in such certificate.

16:13-16. Application to the superior court for disposition of property; order. Any member or officer of such classis having ecclesiastical jurisdiction over the same, when duly authorized by the classis, may make an application to the superior court for such order and disposition of property. The court may thereupon proceed in a summary manner to inquire into the merits of the application, after such notice as the court may prescribe. If it shall satisfactorily appear that making the order and disposing of the property is necessary or proper, for any of the causes mentioned in section 16 13-15 of this title, the court shall render final judgment thereon, declaring such church or society extinct, dissolving the same and transferring to and vesting in the classis having such ecclesiastical jurisdiction, any property and the title and possession thereof, which may belong to the church or society, or which may be held in trust for it, in as full and ample a manner as the same shall theretofore have been vested in the consistory or persons or body holding the same in trust for such church, society and congregation.

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Title 17. CORPORATIONS AND INSTITUTIONS FOR FINANCE AND INSURANCE

17:2-2. Bonds issued by commission appointed by superior court. Any trust company, insurance company, surety, trust and safe deposit company, incorporated under any law of this state, may invest moneys belonging to or deposited with it, in any bonds authorized by the laws of this state to be issued by any commission appointed by the superior court by virtue of any law of this state.

17:9-23. Suits for escheat; jurisdiction; procedure; appeals.

a It shall be the duty of the attorney general within a reasonable time after receipt by him of the duplicate reports to institute suit for escheat to the state of the unclaimed bank deposits of \$50 00 or more in amount disclosed by such reports. The attorney general may join in 1 suit any number of unclaimed bank deposits held by any 1 bank.

b Such suits shall be instituted in the superior court, which shall have jurisdiction, and shall be governed by the statutes applicable to and the rules of that court.

c Such suits shall be instituted by complaint in the name of the state and shall name as defendants the bank holding the unclaimed bank deposits, the depositors to whose credit the unclaimed bank deposits stand credited on the books of the bank and any others whom the attorney general may have reasonable cause to believe may have or claim any right, title or interest thereto.

d The complaint shall set forth the name and address of the bank holding the unclaimed bank deposits and where such name has been changed by merger, reorganization, consolidation or otherwise shall also set forth the name and address of the bank in which the deposits originated, the names of the depositors, their last addresses

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appearing on the records of the bank, the amounts of the unclaimed bank deposits, the identification numbers of the accounts, if any, and the pertinent facts upon which the claim of escheat is based

The bank shall not be bound to answer or take any other steps with respect to the complaint

e If the process shall be returned not served as to any defendant other than the bank, such defendant shall be deemed and taken to be an absent defendant, and the attorney general the court, without requiring further proof by affidavit or otherwise, shall, by order, direct such absent defendant to answer the complaint within 60 days after the date of such order, or a default judgment will be taken against such absent defendant. Notice of such order, entitled in the cause, shall be published once in a newspaper designated in such order. The newspaper so designated shall be one of general circulation published, or if none is published, then one of general circulation circulated in the municipality in which the bank has its office, or if it has offices in more than 1 municipality, then in the municipality in which it has its principal office. The publication shall be made within 10 days after the date of the order. Such notice shall be addressed to the depositors and other defendants by name stating the date of the order, the name of the plaintiff and the time within which the defendants are required to appear and answer the complaint and shall state also in general terms that the object of the suit is to escheat to the state unclaimed bank deposits specifying the name and address of the bank holding the deposits, the last address of the depositors appearing on the records of the bank, the identification numbers of the accounts, if any, but not the amounts of the unclaimed deposits. In case of change of name by merger, reorganization, consolidation or otherwise of the bank which originally held any unclaimed bank deposit, the name and address of the bank in which the deposit originated shall be stated in such notice as well as the name and address of the bank holding the unclaimed bank deposit. Such notice shall be signed with the name, title and address of the attorney general.

The cost of publishing such notice shall be paid by the state treasurer out of the unclaimed bank deposits escheat reserve fund hereinafter provided for or if no or insufficient funds are available therein then out of the general funds of the state.

The mailing of such notice to any such absent defendant shall not be required, notwithstanding the provisions of any other law or rule of court.

f If no answer or other pleading be filed as to the or any of the unclaimed bank deposits named in the complaint within the time limited in the summons or order of the court, the court shall, upon the application of the attorney general, enter a judgment that the depositors entitled to such unclaimed bank deposits shall be

presumed to be dead, intestate, without surviving spouse or next of kin, and that such unclaimed bank deposits have escheated to the state and are the property of the state, and order the bank, holding the same, to pay the same to the state treasurer.

g If the right of the state to escheat the or any of the unclaimed bank deposits named in the complaint is contested, the issue as to such unclaimed bank deposits, when joined, shall be determined according to the practice of the superior court in other suits therein and if determined for the state a judgment shall be entered that such unclaimed bank deposits have escheated to the state and are the property of the state and ordering the bank to pay the same to the state treasurer.

h Upon the entry of a final judgment declaring an escheat of any unclaimed bank deposit and upon service of a true copy of such judgment certified by the clerk of the superior court upon the bank holding the escheated unclaimed bank deposit, the bank shall, unless notice of appeal shall have been served on the bank, pay the same to the state treasurer.

i Appeal from the judgment of the court shall lie to the appellate division of the superior court and any such appeal shall be taken within 40 days after the entry of the escheat judgment and shall be taken and prosecuted according to the statutes and the rules of the court, in such case made and provided.

In case of appeal and affirmance of the escheat or in case of dismissal of the appeal, the bank holding the unclaimed bank deposit shall pay the same to the state treasurer.

17:9-26. Services by salaried officials to be without charge; expenses of administration. All services required to be performed by the clerk of the superior court, the sheriff of any county and any other salaried public official shall be without fees, costs, counsel fees or any other charge, but the state treasurer shall pay out of the reserve fund all expenses and costs incurred by the state treasurer for the administration of said fund and for the establishment and maintenance of his records relative to escheated unclaimed bank deposits, and also all expenses and costs incurred by the attorney general, including costs and expenses for legal and clerical services. The state treasurer and the attorney general may each employ such persons as may be necessary to assist him in carrying out the provisions of this act and fix their compensation, and such persons so employed shall not be subject to the provisions of the civil service law.

17:9-39. Claims; order to show cause; appeal. Any claimant who or which in any capacity has or asserts any right, title or interest in or to any such moneys escheated under this act, or to any part of any such moneys, may file claim therefor with the state treasurer who is authorized to pass upon and determine the claimant's

claim, if the state treasurer shall determine the claimant's proofs of title thereto to be sufficient he shall pay the escheated unclaimed bank deposit or such part thereof to which he may determine the claimant is entitled, without interest, out of the reserve fund, to the claimant, and if the cash balance in the reserve fund is insufficient to make such payment the state treasurer shall sell such of the investments of the reserve fund as may be necessary to make such payment

If the state treasurer determines that the claimant's proofs of title are not sufficient to entitle the claimant to such payment, the claimant may, within 60 days after the date of such determination by the state treasurer, file a petition in the superior court setting forth the fact of the escheat of the unclaimed bank deposit and the facts of petitioner's claim thereto or to any part thereof, whereupon an order to show cause shall be made directed to the state treasurer commanding him to show cause why the petition should not be granted and a copy of said petition and of the order to show cause shall be served upon the state treasurer and upon the attorney general, and it shall be their duty to take such action with respect thereto as they may deem necessary to protect the interests of the state. Upon proof satisfactory to the court of petitioner's claim of title to the escheated unclaimed bank deposit or any part thereof, an order shall be entered establishing petitioner's claim and ordering the state treasurer to pay to the petitioner the amount specified in such order together with such costs and counsel fees as the court may allow the petitioner, and upon service upon the state treasurer of a copy of such order certified to be a true copy by the clerk of the superior court, the state treasurer shall pay to the petitioner out of the reserve fund the amount or amounts specified in such order.

If the court shall determine that petitioner's proofs of title are not sufficient to establish petitioner's claim, an order to that effect shall be made from which order appeal will lie to the appellate division of the superior court, and any such appeal shall be taken and prosecuted according to the rules of courts, in such case made and provided. If on such appeal the order is reversed and petitioner's claim of title to the escheated unclaimed bank deposit or any part thereof is sustained, the state treasurer shall pay to the claimant, out of the reserve fund, the amount or amounts to which the petitioner shall be entitled, together with such costs and counsel fees as may be allowed to the petitioner.

17:11-9. Examinations; dissolution and receiver. The commissioner may, at any time, and as often as he deems it necessary, make or cause to be made an examination of the condition, business and affairs of any such association. If it appears to him from the examination or report that the association is insolvent or has violated any law of this state, or is conducting its busi-

ness in an oppressive or unauthorized manner, he may direct the association to discontinue or correct its objectionable methods and practices. If the association fails to comply therewith, within a reasonable time, the attorney general, upon request of the commissioner, may take proceedings in the superior court for the dissolution of the association, and the court may dissolve the same and appoint a receiver of its assets.

17:12A-76. Unclaimed accounts. If the address of a member or of his legal representative is not known and is not ascertained within 1 year from the time of the retirement of his account, the association may apply to the county court of the county where it is located for an order, and the court may make an order designating a bank, trust company or savings bank, in the county, in which such moneys may be deposited to the credit of the member or his legal representative. A compliance with the terms of the order shall be a full discharge of all liability on the part of the association to the member for the amount so deposited. The moneys so deposited shall be paid by the bank, trust company or savings bank to the member or his legal representative in the same manner and under the same conditions as if the deposit had been made personally by the member. There shall be deducted from the amount due the member, such reasonable sum for the cost of application, as the court may direct.

17:12A-87. Testimony and production of books and securities; subpoenas. The officers, directors and employees of the association shall exhibit its books, papers and securities to the commissioner or the person appointed by him to conduct the examination, and otherwise facilitate the same so far as it may be in their power so to do. The commissioner and every examiner may administer an oath to any person whose testimony is required on any examination, and compel the appearance of any person for the purpose of examination, by subpoena, or subpoena duces tecum. The subpoena may be served in the manner provided in the rules of practice of the superior court.

If any person shall refuse to obey the subpoena, give testimony, answer questions or produce any books, papers or documents as required, a judge of the superior court may, upon application and proof of the refusal, make an order awarding process of subpoena or subpoena duces tecum out of the court for the witness to appear and testify before the commissioner or examiner, and order that he give testimony, answer questions and produce books, papers or documents as required. Upon filing the order in the office of the clerk of the superior court, the clerk shall, under the seal of the court, issue process of subpoena for the appearance of the person before the commissioner or examiner at a time and place named therein, and thereafter from day

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to day until his examination is completed. The subpoena may contain a direction that the witness bring with him to the examination, books, papers or documents mentioned therein, and the clerk shall issue, under the seal of the court, such other or further order in reference to the examination, appearance, production of books, papers or documents before the commissioner or examiner as the court shall direct.

17:12A-96. Application to the superior court for relief. The commissioner may apply to the superior court for an injunction to restrain the association from transacting further business, or from transferring or disposing of any of its property in any manner, or from paying excessive expenses of management, or for the removal of any attorney, conveyancer, officer, director, employee or agent of the association, or for such other relief as the case may require. If the court, after hearing upon notice, shall be satisfied of the sufficiency of the application, it may make such orders or judgments as shall be equitable and just and modify or revoke the same from time to time. Without limiting the generality of his powers, the court, may, upon application by the commissioner, issue an injunction and appoint a receiver with power to take possession, manage and dispose of all of the association's real and personal property, books and records and to hold and dispose of the proceeds thereof, as the court shall direct.

17:12A-97. Possession and operation by commissioner.

1. Commissioner's authority. The commissioner may forthwith take charge of the association and possession of all its real and personal property, books and records, and continue the operation of its business until such possession and management shall be returned to its board, or until such association shall merge, reorganize or dissolve and commence liquidation.

2. Purpose of possession and operation by commissioner. The purpose of the commissioner's management of an association and operation of its business and possession of its assets, shall be to enable him to determine, within 1 year from the date when he undertakes such management, whether it is for the best interests of its creditors, members and the public that the association should be continued as a going concern, or should be merged, reorganized or dissolved and liquidated.

3. Return of management and possession. The commissioner may return the management of an association to its board and the possession of its property to the association at any time after he has taken charge and possession thereof, upon such terms and conditions, if any, as he may prescribe.

4. Powers of commissioner in possession. The commissioner shall have full and complete powers necessary to enable him to determine promptly

and efficiently whether it is for the best interests of the association's creditors, members and the public that it be continued as a going concern or that it be merged, reorganized or dissolved and liquidated. Without limiting the generality of his powers, he shall have power to

a Continue the operation of the association's business

b Conserve its assets and business

c Pay its debts and operating expenses

d Collect moneys due to it.

e Compromise and settle claims by and against it

f Exercise any power conferred by this chapter on the association or its board.

g Call meetings of its members.

h Submit for the approval of its members any terms which he sees fit to recommend with respect to merger, reorganization or dissolution and liquidation.

5. Appointment and compensation of counsel and assistants. The commissioner may, from time to time, appoint 1 or more special assistant deputy commissioners of banking and insurance, who may or may not be employees in the department as the commissioner shall determine, as agent or agents, to assist him in administering the business and affairs of any association of which he has taken possession, and he may, from time to time, hire such employees and assistants as he shall deem necessary to the proper administration of the business and affairs of such association, including officers and employees of the association. He may further, notwithstanding any other provision of the law, appoint an attorney or a counselor-at-law of this state, who need not be a member or an employee of the department of law of this state, to represent and advise him and to act as counsel in the administration of the business and property of the association. He may further, at the expense of the association, obtain such security for the faithful performance of the duties of such assistant deputy commissioners, counsel, and other employees as he shall deem necessary. Appointments of special assistant deputy commissioners and counsel made pursuant to this subsection shall be evidenced by a writing signed by the commissioner and filed in the department.

The compensation of the special assistant deputy commissioners, counsel and of all other persons engaged in the administration of the business and affairs of such association, shall be fixed by the commissioner, subject to the approval of the superior court as hereinafter provided, and shall, upon the certificate of the commissioner, be paid out of the funds of the association.

6. Segregation and application of money paid after commissioner takes possession

a All moneys, which shall be paid on any unpledged account or shares of an association after the commissioner has taken charge of

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such association and possession of its assets, shall be segregated from all other receipts, and held in trust, until the property and business of the association shall be returned to the management of its board, or until it shall merge, reorganize, or dissolve. Upon the happening of any of such events, such money shall, without any impairment whatever and at the option of each person who shall have paid the same either be repaid to him or credited to his account.

b All moneys, which shall be paid on any indebtedness due to the association, or on any account which shall be pledged for the payment of any such indebtedness, after the commissioner has taken charge of such association and possession of its assets, shall be applied without impairment directly to the payment of such indebtedness.

7 Effect of commissioner's possession on rights of third persons. Upon taking charge of an association and possession of its property, the commissioner shall give notice thereof forthwith to all persons holding or having possession of any assets of the association. No person having knowledge or notice that the commissioner has taken charge of an association shall thereafter acquire any lien upon any of the association's assets for any payment advanced, or clearance thereafter made. Upon taking charge of an association by the commissioner, all judgments, levies and executions against such association's property shall be stayed, unless otherwise ordered by the superior court.

8 Financial statements by commissioner. At least annually, and upon the termination of his possession of the assets of an association, the commissioner shall submit a financial statement and report of the affairs of each association in his possession, or in liquidation by him to each of the members thereof. Such statement and report shall include a statement of assets and liabilities, a statement of operations, including an itemized statement of all fees and salaries paid to each special assistant deputy commissioner, agent and counsel of such association, and a statement showing the extent of the liquidation of its assets and the application of the proceeds thereof. The first such report shall be submitted to the members not later than 1 year from the date when the commissioner takes possession, or in the case of an association in possession of the commissioner, when this act takes effect, not later than 1 year from such effective date.

9 Dissolution. Liquidation. Action by members. If the commissioner determines that it is for the best interests of the members and the public that the association be dissolved and liquidated, he shall after paying all claims which have been proved and allowed against the association, call a meeting of the members on 10 days' notice, stating the object thereof, at which the members shall determine whether the

affairs of the association shall be managed and directed, during the liquidating period, by the commissioner or by 3 trustees, who shall be members and who shall be elected at such members' meeting. All questions submitted to the members at such meeting shall be decided by a majority of the votes cast, by person or by proxy.

Upon the adoption of such resolution by the members, the association shall be deemed to be dissolved and it shall be liquidated in accordance with the provisions of article XIX. The commissioner or the trustees, as the case may be, shall have all the powers and duties conferred and imposed upon trustees by the provisions of article XIX, and subject to such restrictions as may therein be contained.

10 Appeal to court from commissioner's action. If when an association, of whose property and business the commissioner has taken possession as aforesaid, or any member thereof, deems itself or himself aggrieved by any act of the commissioner, or any failure of the commissioner to act, while he is in charge of the affairs of the association and in possession of its assets, the association or such member, may file a complaint, verified by affidavit, in the superior court for appropriate relief. The court, upon notice to the commissioner, shall hear and determine the matter in a summary manner and enjoin or compel further proceedings or action by the commissioner, and make such other order judgment as shall be equitable and just.

11 Disposition of unclaimed funds due to members and creditors. Report to legislature. If any liquidating dividend due to any member or any amount due to any creditor, remains in the hands of the commissioner for a period of 6 months after the date of the order for final distribution, such moneys shall be deposited by the commissioner in 1 or more state banks of deposit, savings banks, trust companies, or insured associations, to the credit of the commissioner, in trust for the persons entitled thereto. In the commissioner's annual report to the legislature, he shall include a statement showing the amounts remaining in his hands due to members and creditors of associations which he has taken possession of and liquidated and the names of said associations, respectively. The commissioner may pay the moneys so held by him to the persons entitled thereto, upon receipt of satisfactory evidence of their right thereto. He may apply the interest earned by such moneys towards defraying the expenses of paying and distributing the unclaimed amounts to the persons entitled thereto, and shall include in his annual report to the legislature, a statement showing the amount of interest earned by such unclaimed moneys.

12 Liquidation and accounting by commissioner. On making application to the court for approval of expenses of administration as provided by subsection 5, the commissioner shall file in the court an accounting of the administration

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of the association's affairs from the date upon which possession thereof was taken, including an accounting of the administration of the association's affairs by the commissioner's predecessor or predecessors in office, where such possession was initially taken by such predecessor. Accountings subsequent to the first accounting filed pursuant hereto, shall be only for the period elapsed since the last prior accounting filed in the said court, but shall include a summary of the administration of the association's affairs for the period covered by prior accountings. Upon the filing of the application and the accounting, the court shall make an order directing all members of the association and all claimants entitled to a distributive share of the proceeds of the association's liquidation to show cause, upon at least 10 days' notice, why the accounting should not be approved, and why the expenses of administration should not be allowed in the amounts determined by the commissioner. Copies of the order to show cause shall be mailed to members and claimants at their addresses as they appear on the association's records. Where it is made to appear to the court that the members and claimants are so numerous that service of the order to show cause upon each of them is impracticable or will impose unnecessary hardship, the court may by order designate individual members and other claimants to represent the respective classes of members and other claimants, and may direct that service of a copy of the order to show cause shall be made only upon the representatives so designated, and shall, in such case, direct that the order to show cause be printed once at least 10 days before the return day, in a newspaper published in the municipality in which the association has its principal office, and, if there be no such newspaper, then in a newspaper published in the place nearest thereto. Upon the return day of the order to show cause, the court shall have jurisdiction to hear and determine summarily all matters arising thereon, and shall make such judgment thereon as justice and equity shall require. An appeal from a judgment so made shall lie as in other cases to the appellate division of the superior court. Upon making complete distribution of the proceeds of the liquidation of any association, directed in an order of the superior court, made pursuant to the provisions of this subsection, the commissioner shall file in the superior court a statement of such distribution, and shall file in the department, a certificate that such statement has been filed, specifying the date of such filing. Upon the date of the filing of said certificate in the department, the rights, privileges and franchises of said association shall be terminated. A copy of the certificate, certified by the commissioner, shall be evidence in all courts and places.

17:12A-98. Proceedings in the superior court

upon commissioner's refusal to act. If the capital of an association becomes impaired, or if it suspends its ordinary business for want of funds to carry it on, and the commissioner refuses for a period of 20 days after demand is made upon him by a creditor or member, to take charge of its operations and possession of its property, as hereinbefore provided, the attorney general, or any creditor or member of such association, may apply to the superior court, by complaint, verified by affidavit, for appropriate relief. The court, upon due notice to the association and the commissioner, shall hear and determine the matter in a summary manner and upon being satisfied of the truth of the allegations of the complaint, and that the capital of the association is impaired and that it cannot continue or resume the operation of its business in a short time thereafter with safety to its creditors and the public and advantage to its members, may issue an injunction to restrain the association, its officers and agents from exercising any of its privileges or any of its franchises and from collecting or receiving any money due to it and from paying out any of its money and from selling, assigning, transferring, or otherwise disposing of any of its assets, except to a receiver appointed by the court, and make such other orders and judgments as may be equitable and just. If the court appoints a receiver, he shall have the same powers and duties of a receiver appointed under the provisions of Title 14, Corporations, General, of the Revised Statutes of New Jersey.

17:12A-99. Proceedings before commissioner.

1. Review of commissioner's determination. Except as herein otherwise expressly provided, any association or member aggrieved by any determination, decision, or order of the commissioner or by any failure of the commissioner to make any such determination, decision or order, may, within 30 days thereafter apply for a review thereof to the appellate division of the superior court, in accordance with the practice of said court.

2. Appearances before commissioner. Any person, who is required or permitted to appear before the commissioner as a party in any proceeding, shall appear in person, or by an attorney-at-law of this state.

3. Evidence in proceedings before commissioner.

a. Subpoenas. The commissioner shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence, before him, or any deputy appointed to act for him, in any matter over which he has jurisdiction, control, or supervision. The commissioner, or any such deputy, shall have the power to administer oaths and affirmations to any person whose testimony is required.

If any person shall refuse to obey any such subpoena, or to give testimony, or to produce

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evidence as required thereby, any judge of the superior court may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the superior court, for the witness to appear before the commissioner, or such deputy, and to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the superior court, the clerk shall issue process of subpoena, as directed, under the seal of said court requiring the person to whom it is directed, to appear at the time and place therein designated.

If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the commissioner may proceed, in the superior court, against such person to contempt, pursuant to the rules of court. The court shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence, that may be proper, by a fine, not exceeding \$100.00 or by imprisonment in the county jail, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding to be taxed.

b Perjury. Any person who, upon oath, shall willfully testify falsely in any proceeding before the commissioner, or any such deputy, shall be guilty of perjury.

c Witness fees and mileage. Witnesses subpoenaed to appear before the commissioner, or any such deputy, shall receive the same fees and mileage as witnesses in civil actions.

4 Applications for commissioner's approval. In all cases where the commissioner's approval is required and no procedure for obtaining the same is specified, application therefor shall be made in writing and the commissioner shall, within 30 days after receipt of such application, give written notice to the association either approving such application, when the same may be properly disposed of ex parte, or designating a time and place when and where the commissioner will give opportunity to be heard thereon to the association, and to any party in interest who requests such opportunity. The commissioner may grant reasonable adjournments of such hearing. Within 30 days after such hearing, or after the date designated therefor, if no one appears to be heard, the commissioner shall give written notice to the association of his decision, which notice shall state the reasons therefor, if the application is denied.

If the commissioner fails to give any such notice within the time prescribed therefor, such failure shall be construed as his approval of such application.

17:12A-125. **Objections to plan.** Any member desiring to dissent from such plan shall file a petition of dissent in the superior court in a cause to be entitled "In the matter of the re-

organization of association", the blank to be supplied with the name of the association. Such petition shall set forth the respects in which the petitioner dissents from such plan, and the grounds therefor, and shall be filed at least 5 days prior to the day appointed for the meeting of the members to consider and vote upon such plan. No such petition shall be filed unless it shall have indorsed thereon, or attached thereto, a proof of service of a copy thereof upon such association.

Upon the filing of such petition, the court shall hear and dispose of the matter summarily. If the court shall find that the plan is equitable and fair, it shall make an order approving said plan and dismissing said petition, and thereupon the proposed plan shall be binding upon the dissenting member as fully to all intents and purposes as if he had filed no dissent thereto. If the court shall find that said plan is inequitable or unfair, it shall make an order disapproving said plan and thereafter such association shall not proceed with the proposed reorganization unless and until such order is modified or vacated. No order disapproving any such plan shall prevent an association from proceeding to reorganize in pursuance of the terms of a new or modified plan, either by further proceeding in the cause then pending, upon such notice to the members and the commissioner as the court shall direct, or by proceeding in accordance with the provisions of this article, in the same manner as if no previous reorganization proceeding had occurred. All members shall be conclusively presumed to have assented to such plan unless they dissent therefrom as herein provided.

17:12A-126. **Appeal.** Any person aggrieved by any order of the superior court made pursuant to the provisions of this article may appeal therefrom to the appellate division of the superior court. For the purposes of this section "persons aggrieved" shall include the association, the commissioner, and any member who shall have filed a petition of dissent, or participated as a dissenter in the proceedings in the superior court. L 1946, c 56, p 208, §126.

17:12A-127. **Provisions authorized in reorganization plan.** Without limiting the generality of the methods by which an association may reorganize, any plan of reorganization may provide:

a For reorganization under the existing name of the association, or under a different name.

b For the date upon which the reorganization shall become effective. If the plan fails to designate an effective date, the effective date shall be the date upon which the certificate of the adoption of the proposed plan by the members of the association is filed with the commissioner; provided, however, that if a petition of dissent from said plan has been filed in the superior court, the effective date of reorganization shall be fixed by an order of said court.

c For the crediting of the participation value

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of accounts pledged to secure loans against the amount due on such loans

d For the cancellation of applications for withdrawal on file with the association on the effective date of reorganization

e For the transfer of the title to such assets of the association as may be determined by the board with the approval of the commissioner to a corporation, to be organized pursuant to the provisions of this article, for the sole purpose of liquidating such assets in an orderly manner, and distributing the proceeds thereof

f For the transfer of title to such assets of the association as may be determined by the board, with the approval of the commissioner, to a participating reserve account, to be set up on the books of the association, for the purpose of liquidating such assets in an orderly manner and distributing the proceeds thereof

g For the transfer of title to such assets as may be determined by its board and approved by the commissioner to another association, which may or may not be a new association organized in accordance with the provisions of section 129 of this act or to a federal savings and loan association which has its principal office in this state Upon the completion of such transfer of title, and the recording and filing of the certificate required by section 135 of this act, the association shall be constituted a liquidating corporation within the meaning of this article

h For the exchange of accounts, membership certificates and share certificates in the association for accounts, membership certificates or share certificates in any association to which the title to any of the association's assets may be transferred

i For the reduction of the liability of the association to its members to the extent required to meet actual or anticipated losses, and to create a reserve for such purposes

j For the manner in which the expenses of reorganization shall be paid

k For the borrowing of money necessary or convenient to effect the reorganization without limit as to amount or source, and for the terms and security for the repayment thereof

l For the suspension of the payment of withdrawals and maturities, and for the segregation of moneys received by the association from members, except moneys paid in reduction of debts due to the association, for the period beginning with the adoption by the board of the resolution to reorganize, and ending with the date when the reorganization plan is rejected or takes effect If the reorganization plan becomes effective, the moneys received during said period from savings members shall be credited to the accounts of such members without decrease or impairment for any cause If for any reason said reorganization plan does not become effective, the amount so paid by savings members shall, at the option of the members who have paid them, be returned to them in cash or

credited to their accounts without decrease or impairment Moneys paid during said period by members indebted to the association, shall be credited without decrease or impairment in reduction of such indebtedness

m That, if the association shall transfer title to any of its assets as authorized by subdivisions (e), (f) and (g) of this section, it may either charge off against the value of the assets so transferred, or transfer together with such assets, to the association or to the participating reserve account which receives the same, such part of its reserve accounts as the plan of reorganization shall provide

17:12A-128. Liquidating corporation.

1 Creation Each liquidating corporation created pursuant to the provisions of section 127 (e) of this act shall be created by executing, recording and filing a certificate of incorporation which shall set forth

a The name of the liquidating corporation, which may or may not be the same as that of the reorganizing association with the addition of the words "liquidating corporation",

b The location of its principal office and the name and address of its agent in charge thereof upon whom process may be served,

c That the purpose for which the corporation is formed is to liquidate the assets which are transferred to it pursuant to the provisions of this article

Said certificate shall be signed by a majority of the board of the reorganizing association as incorporators It shall be proved or acknowledged in the same manner as provided for deeds for real property, and shall be recorded in the office of the clerk of the county where the principal office of the corporation is to be located, and after being so recorded shall be filed with the commissioner, provided, however, no such certificate of incorporation shall be recorded or filed until the commissioner has approved the same as to form and indorsed his approval thereon For the filing of such certificate, the commissioner shall receive \$35 00

2 Purposes and powers Upon the recording and filing of such certificate, the incorporators and their successors and assigns shall be a corporation for the sole purpose of liquidating, promptly and in an orderly manner, all assets which shall be transferred to it and of distributing the proceeds thereof

Each such corporation shall have all powers necessary to accomplish such liquidation and distribution including, but not by way of limitation, those specified in section 142 in this act The provisions of section 141, 144, 145, 146, 147 and 150 of this act shall apply to such corporation

3 By-laws The incorporators shall adopt appropriate by-laws with the approval of the commissioner

4 Membership The original members of each

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such corporation shall be those who were members of the association which transferred assets to such association pursuant to section 147 (e) of this act at the time of such transfer. The incidents of membership in such corporation shall be the same as the incidents of membership in an association.

5 Directors. Each such corporation shall have a board of directors consisting of not less than 6 persons, of such number as its by-laws shall prescribe, all of whom shall be members. They shall elect a president, vice president, secretary and treasurer and such other officers as they shall deem necessary, all of whom shall be members of the corporation. The election of officers and directors and their terms of office shall be subject to the provisions of this act relating to officers and directors of an association. The board may exercise all of the powers of the corporation not expressly reserved to its members by the provisions of this act and its by-laws. The terms and conditions of the sale of any property of any such corporation shall be determined by a majority of its board.

6 Creditors. Claims barred. The corporation shall give public notice that all persons having claims against any association whose assets have been transferred to it pursuant to section 127 (e) of this act shall present such claims under oath at the corporation's office within 3 months of the date of such notice or be barred, forever after, from any action therefor. Such notice shall be advertised at least once each week for 12 successive weeks in at least 2 newspapers published in the county in which each such association has its principal office and shall bear the date of the day of the first publication. Within 10 days after date of such notice, a copy thereof shall be mailed to each creditor or other person who is known to have any claim against such association, addressed to his last known post-office address. Proof of such publication and mailing shall be filed with the commissioner. If the corporation disputes all or any part of any claim which is duly presented to it, and gives written notice of such dispute to the claimant, his attorney, or agent, such claimant shall institute suit thereon within 30 days from the receipt of such notice or be barred, forever after, from any action therefor.

The provisions of this subdivision shall not be applicable to or in any way affect any indebtedness on account of any loan made to an association to enable it to effect a reorganization or sale of its assets, and any such indebtedness shall become and be an indebtedness of such corporation; and any obligation evidencing such indebtedness, any mortgage, assignment of mortgage or other document securing such obligation and any agreement with respect to any such indebtedness shall become and be binding upon such corporation and upon its assets with like force and effect as if originally incurred by such corporation.

7 Jurisdiction of the superior court. Each such

corporation or its board may apply to the superior court for instructions with respect to any matter pertaining to the liquidation of its assets, the distribution of the proceeds thereof, and the settlement of its affairs. Upon petition filed with the court for that purpose, and upon such notice, if any, to creditors, members and the commissioner, as the court shall direct, the court may proceed in a summary manner to hear and determine the matters presented to it and make such order or judgment as shall be equitable and just. No such petition for instructions shall confer upon the superior court general jurisdiction over the affairs of such corporation.

8 Termination of corporate existence. Within 90 days after the affairs of each such corporation shall have been fully settled and its assets liquidated and the proceeds thereof distributed, or within such further time as the commissioner may allow, it shall file with the commissioner a certificate, verified by at least 2 of its officers, that the affairs of said corporation have been finally settled and its assets liquidated and distributed, and if the commissioner as a result of an examination or otherwise, is satisfied that the contents of the certificate are true, he shall so indorse the said certificate, and thereupon the said corporation shall be dissolved and its corporate existence terminated.

17:12A-133. Refusal of commissioner to take possession is not implied. No action by an association looking toward its reorganization under the provisions of this article, nor any order made by the superior court in a proceeding incidental thereto, or any act or failure to act by the commissioner pursuant hereto, shall be construed as a demand upon and as a failure or refusal by the commissioner to take possession of such association within the meaning of section 98 of this act.

17:12A-140. Trustees; bonds; removal; successors; action by majority. Each trustee before entering upon his duties, shall file with the commissioner a bond to the association in such sum as the commissioner shall fix, conditioned for the faithful performance of his duties.

The superior court may remove any trustee for cause, upon the application of the commissioner, and may appoint a trustee to serve in the place of any trustee who fails to qualify or whose office as trustee becomes vacant for any cause. No person, other than a member of the association shall be appointed as a trustee for such association unless it appears to the court that no member, qualified to act, will do so. In the event that a trustee is removed, dies or fails to qualify after election as such, the acts of the remaining trustees shall be valid and effectual until the vacancy is filled.

The trustees shall act by a majority vote and the signatures of a majority of them to any deed or other document shall suffice.

The trustees shall apply to the court for ap-

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proval of any account filed by them and for their compensation and discharge. They shall have the powers of receivers as provided in Revised Statutes 14 14-11 and 12. The provisions of Revised Statutes 14 14-11 shall apply to persons refusing to be sworn, to answer questions, or to declare the whole truth.

17:12A-141. Liquidation period; extension. All liquidation proceedings hereafter commenced shall be completed within 5 years from the date of dissolution or within such further time as may be allowed by the superior court or by the members at any meeting which shall be called for that purpose upon at least 10 days notice to every member.

17:12A-142. Powers. Every dissolved association shall have all powers necessary to accomplish its liquidation promptly, efficiently and completely, including, but not by way of limitation, the following

a To employ, retain, and reasonably compensate agents, employees and attorneys

b To sue and be sued

c To acquire title in any manner to any real or personal property in which it has any interest, or in settlement, satisfaction or payment in whole or in part, of any claim

d To enforce all lawful claims, demands, rights, remedies, and liens against persons and property

e To collect all money due to it

f To compromise and settle all claims by or against it

g To sell or otherwise dispose of any asset upon any reasonable terms and conditions

h To rent, manage, conserve and protect any asset

i To accept any member's account in such association, at such value as the trustees may place thereon, in payment of not more than 25% of the purchase price of any real estate. A higher percentage of the purchase price may be paid in such manner with the approval of the superior court

j To execute all contracts, deeds, leases, mortgages, assignments, or other documents or writings necessary or incidental to the exercise of any of its powers

k To borrow money and pledge any asset as security for the repayment thereof. No service charge or bonus for procuring any such loan shall be paid, but this prohibition shall not apply to ordinary and reasonable legal and search fees

l To apply to the court for instructions with respect to any of its powers and duties, but, without obligation to do so

17:12A-148. Accounting by trustees; examination by commissioner; report to members; notice to creditors; appeals. At least annually, unless the commissioner, for good cause, extends the time therefor, and at such other times as the commissioner may require, the trustees of an

association in liquidation shall file in the superior court a true report and account of their administration of the assets and affairs of the association and simultaneously therewith, shall file a copy thereof with the commissioner. The commissioner shall, personally, or by 1 or more examiners designated by him, audit each such report and account and make such examination of the affairs of the association, including a verification of members' accounts, as shall be required in such audit. If, as a result of such audit and examination the commissioner shall find that such report and account is correct, he shall report accordingly to the court and the court shall thereupon, without further inquiry or verification, approve and allow such report and account. If the commissioner shall find, by such audit and examination or in any other manner, that said report and account or either of them is incorrect, or that the trustees have violated any provision of this act, or that the affairs of the association have been mismanaged, he shall report accordingly to the court, and the court shall thereupon, upon motion of the commissioner or upon its own motion, upon notice, make such inquiry and order in the interest of the members and creditors of the association as shall be equitable and just. The commissioner shall receive for all services performed by him pursuant to the provisions of this article, the fees which are fixed by law for like services performed by him in connection with associations not in dissolution and liquidation.

At least 10 days before the filing of each trustees' report and account, a report of the operations of the association for the period of the accounting in the form which is provided for associations not in dissolution, shall be mailed to each member. Said report shall state the time and place when and where the report and account will be filed and the amount of the allowances for compensation which the trustees will apply for. Proof of the mailing of said report to members shall be filed in the superior court simultaneously with the filing of said report and account. No other notice to members need be given of any proceeding for the approval and disposition of any report and account or of any matter which may be presented to the court in connection therewith or incidental thereto. Such notice, if any, as the court may prescribe, of the filing of the report and account and the application for allowances shall be given to the creditors of the association. Any person aggrieved by any judgment or order of the superior court made in proceedings attendant upon the filing of any such report and account, may appeal therefrom to the appellate division of the superior court.

17:12A-149. Superior court jurisdiction; trustees compensation. The superior court shall have full and complete jurisdiction of associations in liquidation and their trustees, and of all mat-

ters and questions arising or growing out of liquidation, and may make such orders and judgments with respect thereto as shall be equitable and just. The court shall allow reasonable compensation to the trustees for their services and costs and expenses of the administration of the trust.

17:13-31. By-laws; approval; review. Every credit union shall, by majority vote of its members and without regard to the number of shares held by each, adopt a set of by-laws not inconsistent with the laws of this state for the regulation of its business as it deems proper and may alter and amend the same from time to time in the manner therein provided. A copy of said by-laws and all alterations thereof and amendments thereto, certified by the secretary, shall be filed in the department of banking and insurance within 30 days after their adoption. No by-laws or alterations thereof shall become effective until the same shall have been approved in writing by the commissioner of banking and insurance and filed in the department of banking and insurance. The commissioner shall, within 30 days after application shall have been made for the approval of any such set of by-laws or amendment or alteration thereof, act upon the same by approving or rejecting the same in writing and shall, within such time, give written notice of his decision to the applicant and shall file a copy of his written approval or written rejection, as the case may be, of said by-laws or alteration or amendment thereof in the department of banking and insurance. His decision may be reviewed in the manner provided in the rules of practice of the superior court.

17:13-50. Examinations and supervision; subpoena; contempt; enforcement of obedience; perjury. Every credit union shall be subject to the inspection and supervision of the department of banking and insurance and the commissioner of banking and insurance shall, either personally or by a person appointed by him, visit and examine every such credit union at least once in each 2 years, or more often if he shall deem it expedient. When deemed advisable the examiner shall verify the liabilities of such credit union to its members by an inspection and verification of their accounts. The commissioner shall promptly communicate the result of each examination to the president of the credit union examined, who shall present the same to its board of directors at the next regular meeting or a special meeting if the commissioner shall so direct. The action taken thereon by the board shall thereupon be promptly communicated by the president to the commissioner.

The officers, directors and employees of the credit union under examination shall exhibit its books, papers, records, documents and securities to the commissioner, or the person appointed by him to conduct the examination, and shall otherwise facilitate the same. The commissioner and

every examiner may administer an oath to any person whose testimony is required on any examination and may compel the appearance of any person for the purpose of examination by subpoena or subpoena duces tecum.

If any person shall refuse to obey the subpoena, give testimony, answer questions or produce any books, papers, records, documents or securities, as required, any judge of the superior court may, upon application and proof of the refusal, make an order awarding process of subpoena or subpoena duces tecum out of the superior court for the witness to appear and testify before the commissioner or examiner and order that he give testimony, answer questions and produce papers, books, records, documents or securities as required. Upon filing the order in the office of the clerk of the superior court the clerk shall, under the seal of the court, issue process of subpoena for the appearance of the person before the commissioner or examiner at a time and place named therein and thereafter from day to day until his examination is completed. The subpoena may contain a direction that the witness bring with him to the examination books, papers, records, documents or securities mentioned therein and the clerk shall issue, under the seal of the court, such other or further order in reference to the examination, appearance, production of books, papers, records, documents or securities before the commissioner or examiner as said justice shall direct.

If any person so summoned by subpoena issued by said clerk shall refuse to obey the subpoena or any direction therein, or shall refuse to give testimony, answer questions, produce any books, papers, records, documents or securities as required, or obey any order made by the court, the commissioner or examiner may, upon notice, institute proceedings for contempt, pursuant to the rules of court.

A person who shall willfully and corruptly testify falsely to a material matter upon oath administered by the commissioner or examiner upon such investigation or inquiry, or in regard to a report made to the commissioner, shall be guilty of perjury and punished accordingly.

17:13-54. Application to superior court; injunction; receiver. The application made to the court, pursuant to section 28 of this act, shall be for an injunction restraining such credit union from the transaction of any further business or the transfer or disposal of its property in any manner whatsoever, and the court, being satisfied of the sufficiency of the application, upon notice, may order an injunction and appoint a receiver with power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description belonging to such credit union and sell, convey and assign the same and hold and dispose of the proceeds thereof under the direction

of the court, or the application of the commissioner may be for an injunction against excessive expenses of management or for the removal of 1 or more of the officers, directors, employees or agents of such credit union or for such other relief or correction as the particular facts demand and the court, after hearing, shall have power to grant such orders and, in his discretion, from time to time, to modify or revoke the same as the evidence in the case, the situation of the parties and the interests involved shall seem to require

17:13-55. Possession to terminate on dissolution, reorganization or court order. Whenever the commissioner of banking and insurance shall take possession of the property and business of any such credit union pursuant to section 28 of this act he shall retain such possession until the property and business of such credit union shall be returned to the management of its board of directors on terms satisfactory to him; provided, however, that the commissioner shall have authority to make application to the superior court as provided in sections 28 and 29 of this act while in possession of the property and business of such credit union, in which case he shall retain the possession of the property and business of such credit union until otherwise ordered by the court, and provided, further, that the commissioner may, if he deems it advisable and for the best interests of the members of such credit union, permit the voluntary dissolution of such credit union and, to that end, surrender to its officers and directors such powers as may be necessary to effect such dissolution in the manner provided in this act, but in such case the trustees in dissolution to be appointed by the members shall be persons satisfactory to the commissioner and the bonds to be given by them shall be approved as to form, sufficiency and amount by the commissioner.

17:13-56. Right of commissioner to continue business. Upon taking possession of the property and business of any such credit union the commissioner may, pending the return of its property and business to the management of its board of directors, the decision of the superior court on an application under sections 28 and 29 of this act or its dissolution as herein provided, continue the operation of the business of such credit union and, for that purpose, the commissioner shall have and may exercise every authority and power theretofore conferred by law, by the provisions of its certificate of incorporation and by its by-laws upon its board of directors and committees and upon all and any of its officers, directors and committee members, provided, however, that this section shall not be construed to deprive any such credit union at any time of title to its property and all transfers and conveyances of property to said credit union during possession shall be made in its name and all transfers and conveyances of property from

such credit union shall be made in the name of such credit union, under its seal or otherwise as the circumstances may require, by the commissioner of banking and insurance, and any act or thing done by such credit union during possession over the signature of or by order of the commissioner of banking and insurance shall be construed to be the act of such credit union and shall be valid and effectual in law if the statutes of this state, the certificate of incorporation of such credit union or its by-laws shall have authorized its board of directors, committees, any director thereof, any committee member thereof or any officer thereof to do or perform such act or thing; provided, further, that the commissioner shall not be obligated to carry on the business of such credit union in possession unless he deems it proper and expedient so to do but may, during possession, conserve its assets until such time as he shall determine it expedient and proper to continue the business or until otherwise ordered by the court after an application made pursuant to sections 28 and 29 hereof or until its dissolution as herein provided

17:13-58. Stay of levies, judgments, executions, et cetera. Upon taking possession of the property and business of any such credit union the commissioner shall forthwith give notice of such fact to any and all banks, trust companies, corporations, associations and individuals holding any assets of such credit union. No bank, trust company, corporation, association or individual knowing of such taking possession by the commissioner or notified as aforesaid shall have a lien or charge for any payment, advance or clearance thereafter made or liability thereafter incurred against any of the assets of such credit union in possession unless such payment, advance, clearance or liability shall have been authorized by the commissioner. Upon taking possession of the property and business of any such credit union by the commissioner all judgments, levies and executions against the property of such credit union shall be thereafter stayed until otherwise ordered by the superior court or until the property and business of such credit union shall have been returned to the management of its board of directors

17:13-59. Superior court applications by persons aggrieved. Whenever any such credit union of whose property and business the commissioner shall have taken possession as aforesaid or any member thereof deems itself or himself aggrieved by any act of the commissioner done pursuant to this section, such credit union or such member thereof may, at any time after such taking possession, apply to the superior court, upon notice, to enjoin further proceedings, and said court, after ordering the commissioner to show cause why further proceedings should not be enjoined and hearing the allegations and proofs of the parties and determining the facts, may, upon the merits, dismiss such application

or enjoin the commissioner from further proceedings or from the doing of any act which will not be in the best interests of the members or grant such other or further relief as may be equitable and just

17:13-69. Removal of trustees; filling vacancies. The superior court may upon application by petition of said commissioner remove any or all of the trustees of any such credit union in dissolution and appoint another or others in his or their place and, in case of any vacancy among the trustees, may fill such vacancy

PROPOSED REVISION

Title 18. EDUCATION

18:5-31. Sale under certain circumstances on order of superior court. When any person dies and by his last will and testament gives, devises and bequeaths any real estate to the board of education of any municipality in this state, by whatever name or names the board may be designated, in trust to take and receive the rents, issues, and profits arising from the same, pay all expenses necessary to the maintenance and proper care of such premises, and the net income arising therefrom to invest in books or other school properties, or otherwise for and on behalf of the schools or any school in such municipality, and for the use and benefit of the scholars thereof, such real estate may be sold under the circumstances hereinafter enumerated and in the manner hereinafter prescribed

When the buildings upon the property are or become old, dilapidated and greatly in need of extraordinary repairs, or when such buildings are not well adapted or become not well adapted for business or other purposes for which they were built, or cannot be repaired or modernized so as to yield a good income without extraordinary expense, or when a fair rental, considering the value of the property, cannot be obtained for the same, or when the premises consist in whole or in part of vacant lots which cannot be rented for a fair price or at all, and when if sold the proceeds arising from the sale of the real estate could be invested and in that way yield a larger income than could be obtained by the renting or other use of the premises, then the board of education or other trustees of the schools or any school of any municipality in this state, may, by summary procedure in the superior court, apply for an order directing that such lands and other premises be sold in fee simple absolute

If it shall be made to appear to the court by any person or persons whom it may concern that such sale may be had without prejudice to the public welfare and the best interests of the school or schools for whose benefit the devise was made, and that it is advisable and best for the beneficiaries of the trust, and that their interests would be promoted by the sale, the

court may order the lands and other premises to be sold by any person authorized to sell lands in New Jersey in fee, either at public or private sale, and with such limitations as to price and as to credit for purchase money as the court may deem proper to direct. The sale shall be reported to the court, and when confirmed by it the seller appointed by the court shall execute a deed, which, when given pursuant to the order, shall convey to the purchaser an estate in fee simple absolute, freely and fully discharged from the trust created by the will of the testator, including such devise whether in trust or not as is mentioned in section 18 5-32 of this title

Note of Reporter The former procedure of this section is superseded by the summary procedure as set forth in Rule 3 79. The only significant change relates to the fixing of the hearing. Under the former proceeding, the chancellor was to set a date for hearing only if he was "satisfied of the sufficiency of the application." It is in the spirit of the new procedure that a hearing in a summary proceeding is a matter of right (compare Rule 3 81—on prerogative writs)

18:5-32. Sale when real estate charged with private bequest. When any such testator as is mentioned in section 18 5-31 of this title shall make a charge on any real estate so devised to any board of education, of any legacy or bequest to any other person in trust or otherwise, then no order for the sale thereof shall be made unless the beneficiary under the legacy or bequest is made a party to the application, nor shall the sale be made unless it shall appear to the court that the rights and interests of the beneficiary under such legacy or bequest will not be prejudiced thereby. If a sale is ordered the court shall make all necessary orders for the conservation of such legacy or bequest as is required in section 18 5-33 of this title with respect to the investment of moneys arising from the sale.

18:5-33. Investment of proceeds under direction of chancellor. The moneys arising from a sale under sections 18 5-31 and 18 5-32 of this title shall be invested, under the direction of the superior court, by and in the name of the board of education or other trustees, being the trustees mentioned in the will to whom the real estate so sold shall have been devised, and shall be held

by them in trust for the uses and purposes set forth in the will. The court may from time to time make such further orders and directions in the premises as shall conserve the purposes of the trust and be deemed necessary to carry out the will of the testator.

18:6-23. Sue and be sued in and by corporate name; submission to arbitration. The board shall, in and by its corporate name, sue and be sued; and may submit to arbitration and determination any and all matters of dispute or controversy which arise, within the terms and provisions of article 1 of chapter 40 of the title Administration of Civil and Criminal Justice (§2 40-1 et seq.).

Source: L 1903 (2d Sp Sess.), c 1, p 20, §47 [C S p 4740, §47], as am L 1922, c 226, p 391, §1 [1924 Suppl §185-47]

18:6-24. Purchase, holding, sale and condemnation of property; appeal from award. The board shall, in and by its corporate name, purchase, lease, receive, hold, and sell property, real and personal, and take and condemn land and other property for school purposes in the manner provided by law regulating the ascertainment and payment of compensation for property condemned or taken for public use. If either party shall feel aggrieved by any proceedings and award thereunder, such party may have such proceedings and award reviewed under the rules of practice of the superior court.

Source: L 1903 (2d Sp Sess.), c 1, p 20, §47 [C S p 4740, §47], as am L 1922, c 226, p 391 §1 [1924 Suppl §185-47]

18:7-75. Condemnation of lands or other property. The board may take and condemn land and other property for school purposes in the manner provided by law regulating the ascertainment and payment of compensation for property condemned and taken for public use, if before beginning such proceedings it shall have the authority of a vote of the legal voters of the district. If either party shall feel aggrieved by any proceedings and award thereunder, he may have such proceedings and award reviewed in the manner provided by the rules of practice of the superior court.

18:7-89. Contesting validity of election ordering issue or use for new purpose. No action, suit, or proceeding to contest the validity of the election ordering the issue of bonds or election or district meeting held pursuant to section 18 7-94 of this title shall be instituted after the expiration of 20 days from the date of such election or meeting.

18:7-110. Power to condemn land and other property. The board of education in every such school district may take and condemn land and other property for school purposes, including the purposes specified in section 18 7-109 of this title, in the manner provided by law regulating the ascertainment and payment of compensation for property condemned and taken for public use, when, before beginning any such proceedings, the

amount necessary for such purpose shall have been fixed, determined and certified by the board of school estimate as provided in this article. If either party shall feel aggrieved by any such proceedings and award thereunder, he may have such proceedings and award reviewed in the manner provided by the rules of practice of the superior court.

18:10-36. Retention of amount of tax sought to be reviewed. When a railroad company shall appeal as provided in the rules of civil procedure relating to appeals from administrative agencies to review any tax paid into the treasury of this state, a portion of which shall constitute the "State Public School Account" to be distributed under this article, the amount sought to be reviewed shall not be distributed but shall be retained in the treasury unless the railroad company shall deliver to the state treasurer a certificate setting forth the amount which it concedes to be due the state, in which event the sum conceded to be due shall be included in the gross sum to be distributed as provided by this article. The portion of the amount retained as is finally determined to be due shall be distributed in the manner provided in this article.

Note of Reporter. Rule 3 81-8 provides review of decisions or action by state administrative agencies by appeal to the appellate division of the superior court. It is preferable in the statute to refer merely to the rules of court as providing the method of review without mentioning the appellate division as the forum of review, inasmuch as the rules can be changed to provide a different forum.

The words "State Public School Account" in the 5th line of the revision are substituted for "fund", to conform to the amendments to the act concerning state aid for schools, L 1946, c 63.

18:20-6. Restraining transaction of business without license. When it shall appear that any corporation is carrying on the business of instructing or teaching as provided in section 18 20-5 of this title, or conferring any such degree, or giving any such diploma without such license, the state board may apply by the attorney general by complaint to the superior court for an injunction to restrain the corporation from the transaction of any such business or the exercise of any such franchise within this state until it shall have obtained such license or the approval of the state board of education. The costs of any such application, to be fixed by the court shall be paid by the corporation before the dissolution of the injunction.

18:20-12. Complaint; issuance of process; nature of process. Every district court in any city or judicial district and every county court in any county may, upon the filing of a complaint in writing, duly verified, which verification when made by the commissioner, may be made upon information and belief that any person has violated the provisions of sections 18 20-5 to 18 20-11 of this title, issue process at the suit of the state board as plaintiff. The issuance of such process shall accord with the rules relating to preliminary

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any proceedings in the local criminal courts. Such process shall state in what respect such sections have been violated by the defendant.

The officers to serve and execute all process hereunder shall be the officers authorized to serve and issue process issuing out of such court.

18:20-13. Summary hearing; commitment for failure to pay amount of judgment. Upon the return of the process or at any time to which the trial shall be adjourned, the court shall proceed in a summary manner to hear testimony and to determine and give judgment in the matter for the recovery of the penalty, with costs or for the defendant. Such court shall, if judgment be rendered for the plaintiff, cause the defendant, other than a body corporate, who may refuse or fail forthwith to pay the amount of the judgment rendered against him, and all the costs and charges incident thereto, to be committed to the county jail for any period not exceeding 90 days.

18:20-14. Adjournment of hearing; bond. The district court or county court may adjourn the hearing or trial in any case from time to time, but in such case, except in cases where the process was a summons, the judge of such court shall detain the defendant, other than a body corporate, in safe custody, unless he shall enter into bond to the state board, with at least 1 sufficient surety in double the amount of the penalty claimed, conditioned for his appearance on a day to which the hearing shall be adjourned, and thence from day to day, unless the case is disposed of, and then to abide by the judgment of the court. Such bond, if forfeited, may be prosecuted by the state board.

18:20-15. Form of conviction. The form of the judgment of conviction shall be governed by the rules of practice of the local criminal courts.

If the defendant is committed to jail in default of payment of the penalty, there shall be added thereto a statement of the name of the defendant and the penalty and costs for which he is committed to jail and the period of detention, unless the penalty and costs are sooner paid, which shall be signed in duplicate by the judge, and the conviction and commitment, 1 of which shall serve the purpose of a warrant of commitment, to be sufficient to warrant the detention of the defendant.

18:20-16. Costs; execution. The clerk of any district court or any county court may sign and

seal any process required to be issued by said sections except a warrant of commitment.

The costs recoverable in any such proceeding shall be the same as costs taxed in actions in such courts, and shall be recoverable by the state board in the event of the conviction of the defendant.

Execution may issue for the collection of any judgment obtained under said sections against the goods, chattels and body of the defendant, without any order first obtained for such purpose. All moneys recovered under the provisions of said sections shall be payable by the state board to the state treasurer.

18:20-17. Docketing judgment of district court. Any judgment recovered for a penalty under the provisions of sections 18 20-5 to 18 20-17 of this title in any district court may be docketed in the same manner as judgments in such courts are docketed under the provisions of sections 2 32-186 to 2 32-201 of the title Administration of Civil and Criminal Justice.

18:14-10. Blank.

18:14-41. Fees for service of process; disposition of fines. For services under the provisions of this article the following fees shall be allowed to the person for serving process, which shall be in lieu of all other fees and charges:

Serving warrant, 75 cents

And mileage at the rate of 4 cents per mile

Serving every subpoena or order, 25 cents

Serving commitment, 50 cents

Such fees shall be paid by the county treasurer or city, town or borough treasurer, as the case may be, and all fines collected shall be paid to said collector or treasurer for the use of said county, city, town or borough.

No person who is paid a stated salary shall be entitled to or be paid any of the fees specified in this section.

18:25-19. Enforcement of orders; review. Observance of an order of the commissioner may be enforced by proceedings in the county court to compel the specific performance of the order or of the duties imposed by law upon the respondent named in the order. Such proceedings shall be brought in the county court to which an appeal from the order would lie as hereinafter provided. L 1945, c 169, p 597, §18, as amended L 1949, c 11, p 46, §12

18:25-20

to

18:25-23. Rules of court

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Title 19. ELECTIONS

19:3-9. Circumstances under which office not void. When upon the trial of any action or proceedings instituted under this title for the purpose of securing a determination that any nomination for or election to any public office or party position is null and void, it shall appear from the evidence that the offense complained of was not committed by the candidate, or with his knowledge or consent, and that all reasonable means were taken by or on behalf of the candidate to prevent the commission of any such offense, or that the offenses complained of were trivial or unimportant, and that in all respects his candidacy and election were free from all illegal acts, or that any act or omission of any candidate complained of arose from accidental miscalculation or from some other reasonable cause of like nature, and in any case did not arise from any want of good faith, and under the circumstances it seems to the superior court judge to be unjust that the candidate shall forfeit his nomination, position or office, then the nomination or election of such candidate shall not by reason of such offense complained of be void.

19:3-13. Candidate inducted into office; action to vacate office. If such determination shall not have been made until after such candidate has been inducted into office, then upon a certified copy of the record of the determination being sent to the attorney general, it shall be his duty to institute an action, in lieu of a prerogative writ proceeding, for the vacation of such office.

If the record relates to the election of any candidate for the office of United States senator, member of congress, state senator or member of the house of assembly, the attorney general, instead of instituting an action for the vacation of the office, shall send the certified copy, within 5 days after the same is received by him, to the United States senate, the house of representatives, the state senate or the house of assembly, as the case may be, if such United States senate, house of representatives, state senate or house of assembly is then in session, and if not, then on the first day of such session.

19:3-16. Candidate inducted into office; action to vacate office. If such determination shall not have been made until after such candidate shall have been inducted into office, then upon a certified copy of the record of the determination being sent to the attorney general, it shall be his duty to institute an action, in lieu of a prerogative writ proceeding, for the vacation of such office.

If the record relates to the election of any

candidate to the office of United States senator, member of congress, state senator, or member of the house of assembly, the attorney general, instead of instituting an action for the vacation of the office, shall send the certified copy, within 5 days after the same is received by him, to the United States senate, the house of representatives, the state senate or the house of assembly, as the case may be, if such United States senate, house of representatives, state senate or house of assembly is then in session, and if not, then on the first day of such session.

19:3-19. Surrender by delegates to national convention of certificate voided by superior court. In the case of a delegate at large or district delegate to any national convention, whose election shall have been declared null and void under this title, after a certificate of election has been issued to him, the attorney general shall transmit to such convention a certified copy of the judgment and determination of the superior court judge declaring the election void, to the end that the certificate of election issued to the person having the next highest number of votes for such party position may be honored by the convention.

Any delegate at large or district delegate to any national convention to whom a certificate of election shall have been delivered, which certificate shall have been declared null and void after such delivery, shall, upon the service upon him of a certified copy of the determination of the superior court judge declaring the certificate null and void, forthwith surrender such certificate to the clerk of the superior court.

19:3-23. Vacation of office when nomination or election void. When the nomination or election of a person to public office within this state or any of its political subdivisions shall have been declared null and void, such person shall remove or be removed from such office.

It shall be lawful for the attorney general to institute an action to remove from office a person whose nomination or election shall be void under the provisions of this title, whether or not such nomination or election shall have been determined to be void in the manner specially provided by this title.

In any action, in lieu of a prerogative writ proceeding, instituted for the purpose of vacating any office in accordance with the directions contained in this title, the finding of the superior court judge that the nomination for or election to such office is null and void shall be admissible

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in evidence on the part of the complainant and be prima facie evidence in any such proceedings of the invalidity of such nomination or election

**19:3-24. Right to seek recovery of office un-
abridged.** Nothing in this title contained shall abridge any right which a claimant to any office might otherwise have to institute proceedings for the recovery of such office, notwithstanding the fact that his nomination for or election to the office may have been declared null and void in the summary proceedings above referred to, but in any such action instituted by any such claimant, the determination of the superior court judge shall be admissible in evidence and be prima facie evidence of the facts therein recited and of the invalidity of such nomination or election

19:4-8. Registers and poll books transmitted to county board or governing body for readjustment purposes. The county board in counties of the first class and the commissioner in municipalities having permanent registration and the governing body of all other municipalities may make application to a judge of the superior court or a judge of the county court in the county in which such county board, commissioner or municipality is situated, for an order directing the county clerk of the county or the municipal clerk of the municipality to transmit to the county board, commissioner or governing body, as the case may be, the registry books or poll books of any election district in the county or municipality if necessary for the purpose of such redistricting, which order shall direct the time within which such registry books or poll books shall be returned to the county or municipal clerk

19:6-3. Members appointed by county board; by county court. The county board shall, on or before the 20th day of March, appoint the members of the district boards. The members of any district board shall be equally apportioned between the 2 political parties which at the last preceding general election held for the election of all of the members of the general assembly cast the largest and next largest number of votes respectively in this state for members of the general assembly

In case the county board shall neglect or refuse to appoint and certify the members of the district boards as herein provided, the county court shall, before the 1st day of April in each year, make such appointments and certifications As amended L 1948, c 2, p 33, §5

19:6-4. Removal of board or members for cause. A judge of the county court or the county board shall have power to dismiss any member of a district board from such board for an illegal act, or for any cause which shall be determined in a summary way by such judge or county board. The county board shall dismiss the members of a district board from such board if upon any

recount of the votes cast in such district it shall appear that errors occurred in the count or the certificate thereof, which, under the provisions of this title, are sufficient to cause the costs of such recount to be paid by the state, county or municipality; and no person so removed from any board shall thereafter be eligible to serve as a member of the same or any other district election board. Application for the removal of all of the members, or of any member of any district election board, may, within 10 days after the final order has been entered on any recount which may have been allowed affecting such district, be made by any candidate at the last election to a judge of the county court or the county board, on which application summary hearings shall be held to determine whether the board or the member was incompetent or careless in the receipt of illegal votes or the rejection of legal votes or otherwise in the conduct of the election generally. If, upon such hearing, it appears to the county court or the county board, as the case may be, that such incompetency or carelessness existed, the board or the member thereof found so to be incompetent or careless shall be removed and upon such removal disqualified from further service as a member of any district board

19:13-12. Recourse to court by candidates for protection of rights. A judge of the superior court on the complaint, duly verified, of any candidate, which complaint shall be made at least 36 days before the election, setting forth any invasion or threatened invasion of his rights under the petition of nomination filed with the secretary of state or with any county clerk, shall hear such complaint in a summary way and make such order thereon as will protect and enforce the rights of such candidates, which order or determination shall be filed within 2 days after the filing of the complaint

19:14-20. Correction of errors. When it shall appear that an error or omission has occurred in the copy prepared by the county clerk for the printer or in the printing of the ballots by any county clerk, any voter resident in the county may present to a judge of the superior court a verified petition setting forth such error or omission; and such judge being satisfied thereof, shall thereupon summarily, by his order, require the county clerk to correct such error or show cause before the judge at the shortest possible day, why same should not be corrected. The county clerk shall correct the same by causing new ballots to be immediately printed in place of those found to be inaccurate or incomplete; and those found to be inaccurate or incomplete shall be immediately destroyed

19:18-1. Election records placed in ballot box; inspection of signature copy records in counties having superintendent of elections; compelling production. As soon as the election shall be

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finished and the votes canvassed and the statements made and certified by the district board as herein required, all ballots which have been cast, whether the same have been canvassed and counted or rejected for any cause, and 1 tally sheet, spoiled and unused ballots, shall be carefully collected and deposited in the ballot box.

In all municipalities the signature copy registers shall not be placed in the ballot box but shall be delivered immediately by the district board to the commissioner of registration.

In order to carry out his duties, any superintendent of elections in counties having a superintendent of elections shall have access and be permitted to inspect and examine any and all signature copy registers for said county for any election which may have been or shall be held in said county and any official or person having possession or custody of same who shall refuse to deliver said signature copy registers to the office of said superintendent of elections forthwith upon demand having been made upon him by said superintendent of elections as aforesaid shall be adjudged a disorderly person and unless the said official having custody or possession of said signature copy registers shall forthwith produce the same at the office of the superintendent of elections when demanded by him so to do, the said superintendent of elections may apply to a judge of the superior court or to a judge of the county court, and such judge shall forthwith make an order directing the official having possession or custody of the said signature copy registers to produce them at once in the court in which said judge may be sitting, and upon their being produced such judge shall deliver the same to the superintendent of elections.

19:18-8. Inspection of contents of ballot boxes, books and documents by superior court. A judge of the superior court may at any time for satisfactory reasons shown, and when he deems it necessary, issue an order for the opening of any ballot box or boxes and the removal of the contents thereof and for the removal from the file of any municipal or county office of any documents and books for any necessary purpose, which order shall also set forth the return of such contents to the ballot box or boxes and their return together with the documents and books to the files of the office from which the same were removed.

19:23-29. Error in ballots; correction. When it shall appear that any error or omission has occurred in the copy prepared by the municipal clerk for the printer or in the printing of the official ballots for any primary election by any municipal clerk, any voter resident in any election district affected by such error or omission may present to a judge of the superior court in the county containing the election district a verified statement setting forth the error or omission, and such judge, being satisfied thereof, shall thereupon summarily, by his order, require

the municipal clerk to correct the error or omission, or show cause why it should not be corrected.

19:26-2. Primary books; public inspection; removal of names from. The party primary poll books shall be subject to public inspection, and any voter whose name appears therein may apply to the county court for his county, at any time prior to the next primary election to have his name stricken from such books, and the court shall have power to hear the application in a summary way at such time and upon such notice to that person as it may prescribe, and if satisfied that the applying voter's name has been improperly placed on such primary book, the court may make an order directing the commissioner, the county clerk or the municipal clerk, as the case may be, to erase the name from the primary book, and the commissioner or clerk, as the case may be, shall thereupon erase the same.

19:28-1. Application to superior court or county court for recount; persons entitled to apply. When any candidate at any election shall have reason to believe that an error has been made by any district board or any board of canvassers in counting the vote or declaring the vote of any election, he may, on or before the second Saturday following such election, or declaration of any board of canvassers, apply to a judge of the superior court or to a judge of the county court of the county wherein such district or districts are located for a recount of the votes cast at the election in any district or districts.

When 10 votes at any election shall have reason to believe that an error has been so made in counting or declaring the vote upon any public question at any election, such voters may, within a like time, make like application for a like recount of the votes cast at the election on such public question.

19:28-2. Expenses of recount; liability for; deposit by applicants. Any applicant or group of applicants, as the case may be, for such recount, upon applying therefor, shall deposit with the county clerk or such other public officer or officers as such judge shall direct, such sum of money proportioned to the number of votes to be counted but not exceeding \$25 for any 1 district recount of which is asked, as the judge shall order as security for the payment of the costs and expenses of the recount in case the original count be confirmed. Such judge shall fix and determine the amount of compensation to be paid for making the recount, and the costs and expenses thereof. If it appears that an error or errors have occurred as a result of which the election is changed or the difference in the vote between any candidate and any other candidate for the same office or between the negative and affirmative of any such public question is altered in any district by more than 10 votes

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or 10 per cent of the total vote cast in the district, whichever is the greater, the costs and expenses of the recount of such district shall be paid by the state, county or municipality in and for which the election was held, upon the warrant of such court as other election expenses are paid. If no error shall appear sufficient to produce such change, the costs and expenses of the recount shall be paid out of the deposit made as security by the party or parties making the application.

19:28-3. Recount; order and proceedings. Such judge shall be authorized to order upon such terms as he deems proper a recount of the votes as he may determine, to be publicly made under his direction by the county board. Such board shall have power to subpoena witnesses to testify and produce documents and paraphernalia as it may determine, after 3 days' notice of the time and place of the recount has been given by such applicant or group of applicants to such interested party or parties as the judge may direct. The members of the district board shall be subpoenaed to be present at the recount to witness the opening of the ballot box or boxes used in their election district and to give such testimony as the county board deems necessary. The judge shall have power to decide all disputed questions which the county board shall fail to decide by a majority vote.

19:28-4. Revocation of election certificate; new certificate. If it appears upon such recount that an error has been made sufficient to change the result of such election such judge in case of candidates shall issue an order to revoke the certificate of election already issued to any person, and shall issue an order directing the chairman and clerk of the county board of canvassers to issue in its place another certificate in favor of the party who shall be found to have received a plurality of the votes cast at the election, which certificate shall supersede all others and entitle the holder thereof to the same rights and privileges as if such certificate had been originally issued by the canvassing board. In the event the person to whom the certificate of election has already issued shall so request, such judge shall order the recount to proceed in all districts in which such person was a candidate for election and shall withhold the issuance of any such new certificate until it shall finally be determined who has received a plurality of the votes cast at such election. If during the further recount requested by the person to whom the certificate of election has already issued, such person gains sufficient votes to give him more votes than the contestant, the judge conducting the recount may then order that the recount shall not proceed unless the contestant shall deposit such further sum of money as the judge shall require not exceeding \$25 per district.

In case of a tie vote as a result of a recount the judge conducting the recount shall issue an

order revoking the certificate originally issued by the board of canvassers.

19:28-5. Order of judge filed with secretary of state. When any such certificate shall be issued or revoked by order of a judge of the superior court or the county court, his order shall be filed with the secretary of state or with the clerk of the county or municipality, as the case may be, in and for which such election was held.

19:29-2. Complaint to superior court; contents; verification; bond to incumbent. All contests arising under this chapter shall be heard and decided by a judge of the superior court.

In the case of an office or proposition voted for by the voters of the entire state or more than 1 county thereof, the contest shall be commenced by the filing with the clerk of the superior court a complaint signed by at least 25 voters of the state or by any defeated candidate for such nomination, party position or public office.

In all other cases the contest shall be commenced by the filing with the superior court or the clerk thereof a complaint, signed by at least 15 voters of the county or by any defeated candidate for such nomination, party position or public office.

The complaint shall be verified by the oath of at least 2 of the plaintiffs or by the plaintiff filing the same, as the case may be, which verification may be made on information and belief. The complaint shall be accompanied by a bond to the incumbent, with 2 or more sureties, or a deposit of cash security, in the penal sum of \$500, conditioned to pay all costs in case the election be confirmed, or the complaint dismissed or the prosecution fail. When the reception of illegal or the rejection of legal voters is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the election district where they voted, or offered to vote, shall be set forth in the complaint, if known.

Source As am L. 1947, c. 6, p. 21, §1

19:29-3. Filing complaint; time for. The complaint contesting any nomination to public office, election to party office or position or the proposal of any proposition shall be filed not later than 10 days after the primary election.

The complaint contesting any election to public office or approval of any proposition shall be filed not later than 30 days after such election, unless the ground of action is discovered from the statements, deposit slips or vouchers filed under this title, subsequent to such primary or other election, in which event such complaint may be filed 10 or 30 days respectively after such statements, deposit slips or vouchers are filed.

Any complaint of contest may be filed within 10 days after the result of any recount has been determined or announced.

19:29-4. Time for trial; notice to incumbent. The court shall appoint a suitable time for

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hearing such complaint, not more than 30 nor less than 15 days after the filing of the complaint, and the contestant shall cause a notice of such hearing, with a copy of the contestant's complaint, to be served on the incumbent at least 10 days before the day set for trial

19:29-5. Procedure at trial. The proceedings shall be similar to those in an action at law so far as practicable, but shall be under the control and direction of the court, which shall hear and determine the matter without a jury, with power to order any amendments to the complaint or proceedings as to form or substance, and to allow adjournments to any time not more than 30 days thereafter for the benefit of either party, on such terms as shall seem reasonable to the court, the grounds for such adjournment being shown by affidavit

19:29-6. Witnesses and evidence. The court may compel the attendance of any officer of such election and of any other person capable of testifying concerning the same, and also compel the production of all ballot boxes, books, papers, tally lists, ballots and other documents which may be required at such hearing. The style, form and manner of service and process and papers, and the fees of officers and witnesses, shall be the same as in the superior court in other cases, as far as the nature of the case admits

19:29-7. Witnesses required to testify. The court may require any person called as a witness who voted at such election to answer touching his qualification as a voter, and if the court, from his examination, or otherwise, is satisfied that he was not a qualified voter in the election district where he voted, it can compel him to disclose for whom he voted

19:29-8. Judgment; misconduct by members of district boards. The court shall pronounce judgment whether the incumbent or any contestant was duly elected, and the person so declared elected will be entitled to his certificate. If misconduct is complained of on the part of the members of any district board it shall not be held sufficient to set aside the election unless the rejection of the vote of such district would change the result as to that office

19:29-9. Form and effect of judgment. If the judgment be against the incumbent, and he has already received a certificate of election, the judgment shall annul it. If the court finds that no person was duly elected, the judgment shall be that the election be set aside

19:29-10. Order of court putting successful party in office. When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the court shall, if the judgment be against the party in possession of the office and in favor of his antagonist, issue an order to carry into effect its judgment, which order shall be under the seal of the court, and

shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books, papers and effects belonging to the same

19:29-11. Appeal to appellate division of superior court for error of law; recognizance. The party against whom judgment is rendered may appeal for error of law only to the appellate division of the superior court, but such appeal shall not supersede the execution of the judgment of the court, unless the party so appealing shall become bound to the other party by supersedeas bond pursuant to the rules of the supreme court. The amount of such supersedeas bond shall be fixed by the judge who presided at the trial, and shall be at least double the probable compensation of such officer for 6 months

19:29-12. Precedence of appeal; notice of argument. Such appeal shall take precedence over all other causes upon the calendar
Source L 1930, c 187, p 834, §366

19:29-13. Enforcement of judgment after affirmance; action on supersedeas bond. If upon appeal the judgment be affirmed, the judge who presided at the trial, or in his absence or inability to act any judge of the superior court, shall order the judgment of the superior court to be enforced, if the party against whom judgment is rendered is in possession of the office, and the proceedings on the supersedeas bond shall be as provided for in other cases in the rules of the supreme court

Source L 1930, c 187, p 834, §367

19:29-14. Costs; liability for. The contestant and incumbent shall be liable to the officers and witnesses for the costs made by them, respectively. If the election be confirmed, or the complaint dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs, and if the judgment be against the incumbent, or the election be set aside, he shall pay the costs at the discretion of the court. After the entry of the judgment of the court the costs may be collected by attachment or otherwise

19:31-15. Check-up by commissioner or county board; transfer of permanent registration forms; notices; publication; application for order to vote; misdemeanor. For the purpose of preventing fraudulent voting and of eliminating names improperly registered, the commissioner in counties having a superintendent of elections, and the county board in all other counties, shall within 90 days after each general election preceding the general election at which members of the house of representatives are elected send by government reply postal card to each registrant who failed to vote at such election, at his registered address, a notice substantially as follows

"Please answer the question as to residence and removal as indicated on attached reply card

Commissioner of Registration"

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The reply card shall be addressed to the commissioner and shall bear substantially the following questions with appropriate spaces for answers:

"1. Do you still reside at the address to which this notice has been mailed?"

2 If not, where do you now reside? (stating street address and city or town to which you have moved)

Signed"

The county board in counties not having a superintendent of elections, may also, and in addition to the method hereinbefore provided, direct at any time an authorized clerk or clerks to make any personal investigation which the commissioner or county board may deem necessary to establish the fact of continued residence or of removal of any registrant.

The commissioner in counties having a superintendent of elections, and the county board in all other counties, shall, in addition to the method hereinbefore provided, at least once during every 4 years and as often as the commissioner in counties having a superintendent of elections or the county board in all other counties, may deem necessary cause the entire registry list to be investigated by house-to-house canvass to establish the fact of continued residence, removal, death, disqualification or improper registration.

In case of registrants who have been found to the satisfaction of the commissioner in counties having a superintendent of elections and to the county board in all other counties, to have moved from one address to another within the same county, the commissioner in counties having a superintendent of elections, and the county board in all other counties, shall cause the permanent registration forms of said registrants to be transferred to the proper registers, upon receipt of a change of residence notice duly executed by such registrants, as provided by law.

In case of registrants so found to have moved to any place outside the county or state, the commissioner in counties having a superintendent of elections, and the county board in all other counties shall cause the permanent registration forms of such persons to be transferred to the inactive file. Such persons upon return to any municipality within the county shall be required to reregister before being allowed to vote.

In case of registrants so found to have died, been disqualified or improperly registered, the county board in counties not having a superintendent of elections shall cause the permanent registration forms of such persons to be transferred to the inactive or death file as the case may be.

The county board in counties not having a superintendent of elections before removing, for any reason whatsoever, the permanent registration forms of any registrant from the signature copy registers, or before transferring such forms to the inactive file shall cause to be published a notice setting forth the proposed action of the

county board. This notice shall contain the list of the names and registered addresses of all registrants to be affected by the proposed action. Such notice and list shall be published at least 2 entire days prior to the removal of such names and shall be published in 2 or more newspapers published within the county, 1 of which newspapers, at least, shall be published in the municipality affected. At least 1 of such newspapers shall be a daily newspaper, but if there be no daily newspapers published in the county then such notices shall be published as above provided in weekly papers. The notice and list shall in addition specify the reason or reasons for the contemplated removal or transfer of the permanent registration forms of the registrants affected. The notice and list shall be published in the manner above provided prior to the second Tuesday preceding any election.

Any person affected by any action of the county board in counties not having a superintendent of elections, shall, during the 2 weeks immediately preceding any election and on election day, have the right to make application to any judge of the county court of that county, for the purpose of obtaining an order entitling him to vote in the district in which he actually resides. The burden of proof shall be upon the applicant. The judge of the county court, if satisfied that the applicant is entitled, under the law, to vote at such election, and after determining the election district in which such person actually resides, may issue an order directing the district board of that district to permit such person to vote. Such person must reregister before voting at any subsequent election by court order or otherwise. If the applicant shall be refused the right to vote, due to inability of the district board or of the commissioner or of the county board to find the permanent registration forms of such applicant, then in addition such applicant shall establish by reference to the registry lists of former elections, that he was previously registered. Such evidence shall be deemed sufficient to establish the fact that the applicant was formerly registered. If the order is directed to a district board, the district board shall certify and return the order at the close of the election to the commissioner.

In counties having a superintendent of elections, any registrant so found to have died, or been disqualified by conviction of a crime which would disfranchise a person under the laws of this state, or never has resided at the place of registry or is registered from some place other than his actual residence, or does not possess the qualifications to vote required by the constitution of this state, or is otherwise not entitled to vote, the commissioner shall cause the permanent registration forms of such registrant to be transferred to the inactive or death file as the case may be.

The commissioner in counties having a superintendent of elections, before transferring such

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forms to the inactive file or death file, shall serve an order in writing signed by him, upon the proper district board, ordering it to refuse to allow such person to vote at the next election

The commissioner in counties having a superintendent of elections, before signing such order in writing to any district board, shall give notice of his proposed action to such registered person, (1) personally, or (2) by leaving the same at the person's registered place of residence with a person above the age of 14 years, if any such person can be found, and if not, by affixing the same to the outer door of such place of residence or to any other portion of such premises if no building be found thereon, or (3) by sending the same by mail addressed to the person at his registered place of residence at least 2 entire days before the issuance of the order and the commissioner shall cause a list of the names of such persons, with their registry addresses, to be published at least 2 entire days before the issuance of the order in 2 or more newspapers published within the county, at least 1 of which shall be a daily newspaper. Such published notice, in addition to containing the names and addresses of such persons, shall give notice to them of the proposed action of the commissioner. No such order in writing shall be signed by the commissioner subsequent to the Tuesday preceding an election

In all counties when the transfer of any person's permanent registration form is to be made to the death file or is to be made to the inactive file because such person did not vote at a general election during 4 consecutive years, or because the name of such person has been ordered stricken from the register by the court, or because such person has changed his or her name by judgment of court, or because such person is a woman who changed her name due to marriage or divorce and neglected to reregister in accordance with law, or because the information which forms the basis of such proposed action in making such transfer was received from such person directly, no notice of such proposed action need be given to such registered person and such person's name and registry address need not be published as required in this section

The commissioner in counties having a superintendent of elections, shall cause such order to be delivered to the district board at the same time as the challenge lists are delivered, which order shall be receipted for by the judge of the district board, who shall use the order in conjunction with the registry list, so that no person whose name appears upon the order shall be allowed to vote. Such order shall be signed and certified to by each member of the district board to the effect that no person whose name appears therein has been allowed to vote. The order shall be returned to the commissioner at the same time and together with the challenge lists. Upon receipt of such order the commissioner shall thereupon transfer the permanent registration forms of

the person named in such order to the inactive, death or conviction file, as the case may be, and he shall not be permitted to vote at any subsequent election, by court order or otherwise, unless he has reregistered

Any person affected by the action of the commissioner in counties having a superintendent of elections shall, during the week immediately preceding the election and on the election day have the right to make application to a judge of the county court of the county for the purpose of obtaining an order entitling him to vote in the district in which he actually resides. The burden of proof shall be upon the applicant. The judge of the county court, if satisfied that the applicant is entitled under the law to vote at such election and after determining the election district in which the person actually resides may issue an order directing the district board of that district to permit such person to vote. If the applicant shall be refused the right to vote, due to the inability of the district board or of the commissioner or of the county board to find the permanent registration forms of such applicant, then in addition such applicant shall establish by reference to the registry lists of former elections, that he was previously registered. Such evidence shall be deemed sufficient to establish the fact that the applicant was formerly registered. The district board shall certify and return the order to the commissioner at the close of the election, who thereupon shall restore the permanent registration forms of such person to the active file. Before the issuance of such order, the commissioner shall be heard personally, or by his chief deputy or assistants, as to the reasons why he has issued an order denying such person the right to vote. The commissioner or any one representing him shall have full power to cross-examine any witness. The judge of the county court making such order shall cause a full record of the proceedings of the application to be taken stenographically, transcribed and filed in the office of the county clerk of the county, which record shall be open and public record. All costs and expense of such proceedings shall be paid by the county

In no event shall the permanent registration forms or voting record of any registrant be removed or transferred to the inactive file subsequent to the second Tuesday preceding any election, until after such election; nor shall the permanent registration forms or voting record of any registrant in counties not having a superintendent of elections be removed or transferred to the inactive file if the name of such registrant is not first published in the manner above described, except as herein otherwise provided

Any commissioner who, after ascertaining that a person has died, been disqualified, moved out of the permanent registration area or has been improperly registered, and who willfully or fraudulently refuses to cause to transfer the permanent registration forms of such persons to

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the proper file shall be guilty of a misdemeanor

19:31-27. Candidate may inspect registration binders and poll books; court order. Any candidate or his duly authorized attorney shall within 20 days after any election, upon application to the commissioner of registration, be permitted to inspect and examine the original and duplicate registration binders and poll books in the office of the commissioner and compare signatures thereon and if the commissioner shall refuse the right of examination and inspection, application may be made to any judge of the superior court or to any judge of the county court and such judge or justice shall forthwith order the said commissioner to allow such person to make an examination and inspection, as aforesaid

19:32-18. Application to judge of county court for order allowing voter to vote. Any person affected by the action of the superintendent shall during the week immediately preceding the election and on the election day have the right to make application to a judge of the county court of the county for the purpose of obtaining an order entitling him to vote in the district in which he actually resides. The burden of proof shall be upon the applicant

A judge of the county court, if satisfied that the applicant is entitled under the law to vote at such election and after determining the election district in which the person actually resides may issue an order directing the district board of that district to permit such person to vote. If the order is directed to a district board in municipalities having permanent registration, the district board shall certify and return the order to the commissioner at the close of the election, who thereupon shall restore the permanent registration forms of such person to the active file. Before the issuance of such order, the superintendent shall be heard personally, or by his chief deputy or assistants, as to the reasons why he has issued an order denying such person the right to vote. The superintendent or any one representing him shall have full power to cross-examine any witness

The judge of the county court making such order shall cause a full record of the proceedings of the application to be taken stenographically, transcribed and filed in the office of the county clerk of the county, which record shall be an open and public record. All costs and expense of such proceedings shall be paid by the county

Any person whose name shall appear on the peremptory order list and who shall not apply for and be granted an order to vote, during the week immediately preceding the election or on the election day immediately following the publication of his name as heretofore provided, shall not be permitted to vote by court order or otherwise until he shall have first reregistered

19:32-19. Penalty for disobedience of peremptory order. Any member of a district board who, after the receipt of an order from the su-

perintendent denying any person the right to vote, unless the order of the superintendent has been revoked by a judge of the county court of the county, as herein above provided, allows such person to vote, shall be guilty of a misdemeanor, shall forfeit his right to such office and be subject to imprisonment for a term not exceeding 3 years, or the payment of a fine of \$1,000 00, or both.

19:33-1. Procedure. The judge of the superior court or the judge of the county court shall order stricken from any register the name of any person who shall be shown to his satisfaction not to be entitled to vote at any election in the election district wherein he is registered, and the commissioner shall, upon such order, cause the name of such person to be stricken from the register

Such judge shall hear an application to strike off in a summary manner at the time and day specified in the notice hereafter provided, but no name shall be stricken or ordered stricken from any such register in the absence of the person to be affected thereby, unless it shall appear to the judge by affidavit of the commissioner of registration or his deputy or assistant that notice by mail has been given such person, either personally or by leaving the same at his registered place of residence, or present actual residence, if known to the commissioner, at least 5 entire days before the day and time of hearing before such judge, that at such hearing application would be made to have the name of such registered person stricken from the register, and of the grounds on which such application would be based. Such judge shall not order any name stricken subsequent to the sixth Tuesday preceding any election. The commissioner shall notify the justice or judge, 5 days before the day and time specified, when the application will be made, and the judge shall hear the application at the time and day specified in the notice

In addition to the notice by mail, the commissioner shall also publish in 1 or more newspapers within the county at least 5 entire days before the day and time of hearing before such judge, the names and registered addresses of such persons as shall be affected by this proceeding, giving notice through such publication of the time and place where the application is to be made for the removal of said names from the registry lists

The judge shall cause a full record of the proceedings of such application, including the appearances and a statement of his findings of fact and law and of the order made pursuant thereto, to be taken stenographically, transcribed and filed in the office of the county clerk, which record shall be public. All costs and expenses of such proceedings shall be paid by the county. The commissioner of registration, after the hearing before the court, shall transfer to the inactive

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file the permanent registration and record of voting forms of such persons as the judge of the superior court, or the judge of the county court shall have ordered stricken from the signature copy register pursuant to this section

The registrant shall be immediately notified by the commissioner by mail of any transfer made pursuant to this section. In counties other than counties of the first class this notice by mail shall be sent in addition to the notice by publication

19:34-56. Disobedience of subpoena; civil penalty; body attachment; contempt of court. Every person upon whom a subpoena issued under and by virtue of this title shall have been served, and to whom the lawful fees shall have been paid or tendered, shall obey the command of such subpoena, under the penalty of \$50 00, to be sued for and recovered, with costs, in an action at law, before any court of competent jurisdiction, by the person on whose application such subpoena shall have been issued, but no person shall in any case be required to attend any such examination as a witness out of the county in which he resides

If any person so duly subpoenaed shall neglect or refuse to obey the command of such subpoena, any judge of the superior court or judge of the county court may, on due proof by affidavit of the service of the subpoena on such witness, and of the payment of his legal fees and of his refusal or neglect to obey the command of the subpoena, issue an attachment against the person to bring him before such judge, and the judge shall have power to proceed against such witness as for a contempt of court

19:34-57. Subpoenas; officers required to issue; expense of; not issued on election day. If proof be made before any magistrate of facts constituting probable cause for believing that this title has been violated, and that any person other than the accused has knowledge of the circumstances connected therewith, such magistrate shall issue process of subpoena for the appearance of such person before him, to be examined touching the same. The lawful expenses of such subpoena and examination shall be paid by the applicant therefor, and such evidence shall be filed with the clerk of the county, to be used before the grand jury. No such process of subpoena shall be issued or served nor any such examination held on the day of election

19:34-58. Witnesses required to testify; incriminating testimony. On the trial of an indictment for violation of any of the provisions of this title, all witnesses sworn shall truly answer all questions put to them which the court shall decide to be proper and pertinent to the issue involved

No witness shall be excused from answering any such question on the ground that to answer the same might or would incriminate him, or

might or would tend to incriminate him; but no answer or answers made by any witness to any such question shall be used or admitted in evidence in any proceeding against such witness, except in case of a criminal proceeding for perjury in respect to his answers to such questions

19:43-3. Payment after time limit; court order. The judge of the county court in the county wherein the statement of expenses of a candidate is required to be filed, or in case the statement of expenses is required to be filed in the office of the secretary of state, then any judge of the superior court, may on the application of either the campaign manager or a creditor, allow any bill incurred in aid of the candidacy of any person to be paid after the time limited by this title, if the expenditure of such money has been duly authorized in the manner and form required by this title and a statement of any sum so paid, with the certificate of its allowance, shall forthwith after payment be filed by the campaign manager in the same office as the statement of campaign expenses of the candidate is required to be filed. The claims of 1 or more creditors may be united in 1 application, but the amount and specific character of each claim shall be separately stated. Any claim so allowed to be paid shall be paid from the account known as the campaign fund of the candidate, if such candidate is required to designate a depository for campaign funds, on deposit in the bank or trust company selected by the candidate in accordance with the provisions of this title, or if such account has been closed then from any other funds in the hands of the candidate or his manager

19:44-6. Filing statements; errors and omissions corrected. Candidates for nomination for or election to any public office shall cause to be filed the statements of their campaign managers in the same office in which the petitions for nomination for such office shall be required by law to be filed

Any affidavits, statements or vouchers required by this title to be filed by the cashier or treasurer of any bank or trust company, relating to the candidacy of any candidate for nomination for or election to any public office or party position, shall be filed in the same office in which the above-mentioned statements of the candidate are by this title required to be filed

In case any statement required by this title to be filed by or on behalf of any candidate has not been filed within the time herein limited, or in case such statement, or the affidavit verifying the same, contains an error or false recital, the candidate or his campaign manager may apply to a judge of the superior court if the statement has been filed or is required to be filed in the office of the secretary of state, or to a judge of the county court of the county in which the statement is filed or required to be filed, if it is required to be filed with the county clerk

of any county, or with any other public officer within any county. If it shall appear to the judge that the failure to file the statement within such time, or the inaccuracy or false recital contained therein or in the affidavit thereto annexed was due to the illness of the candidate or the absence, illness or death of his campaign manager, or was caused by the misconduct of any person other than the candidate or his campaign manager, or by any other reasonable cause not involving gross negligence on the part of the candidate or his manager, or willful intention to violate any provision of this title, the judge may make an order permitting such statement to be filed as of time or permitting an amendment of the statement or affidavit.

19:45-8. Compensation of judges holding court. Each of the judges holding court, as herein required, shall be entitled to receive the sum of \$20 00 for each day he shall be personally present, pursuant to the provisions of this title, in addition to the salary to which he is now entitled by law, which sum shall be paid by the treasurer of the county as other court expenses are paid.

19:31-27. Candidate may inspect registration binders and poll books; court order. Any candidate or his duly authorized attorney shall within 20 days after any election, upon application to the commissioner of registration, be permitted to inspect and examine the original and duplicate registration binders and poll books in the office of the commissioner and compare signatures thereon and if the commissioner shall refuse the right of examination and inspection, application may be made to any judge of the superior court or to any judge of the county court and such judge shall forthwith order the said commissioner to allow such person to make an examination and inspection, as aforesaid.

19:32-41. Application to county court judge for order allowing voter to vote. Any person affected by the action of the superintendent shall during the week immediately preceding the election and on the election day have the right to make application to a judge of the county court of the county for the purpose of obtaining an order entitling him to vote in the district in which he actually resides. The burden of proof shall be upon the applicant.

The judge of the county court, if satisfied that the applicant is entitled under the law to vote at such election and after determining the election district in which the person actually resides may issue an order directing the district board of that district to permit such person to vote. If the order is directed to a district board in municipalities having permanent registration, the district board shall certify and return the order to the commissioner at the close of the election, who thereupon shall restore the permanent registration forms of such person to the active file. Before the issuance of such order, the superintendent shall be heard personally, or by his

chief deputy or assistants, as to the reasons why he has issued an order denying such person the right to vote. The superintendent or any one representing him shall have full power to cross-examine any witness.

The judge of the county court making such order shall cause a full record of the proceedings of the application to be taken stenographically, transcribed and filed in the office of the county clerk of the county, which record shall be an open and public record. All costs and expense of such proceedings shall be paid by the county.

19:52-6. Locking machine; rechecking; cost; deposit; irregular ballots, disposition of. The district election officers shall, as soon as the count is completed and fully ascertained, as by this subtitle required, lock the counter compartment and it shall so remain for a period of 15 days, except it be opened by order of a judge of the superior court. Within such period and upon written request of any defeated candidate, or upon petition of any 10 qualified voters of a county or municipality using machines who voted in the election in question, the court shall, at a cost of \$2 00 per district to the candidate or petitioners, order the machines in question opened and the registering counters rechecked against the election officers' returns. Any candidate or petitioners requesting such recheck, shall deposit with the county clerk, the amount necessary for all the districts requested. The county clerk, if it appears that an error or errors have occurred as a result of which the election is changed or the difference between the negative and affirmative of any public question is altered so as to change the results of the election, shall upon the warrant of such judge of the superior court pay to such candidate or petitioners the cost of such recheck. In the event it shall appear after such recheck that the results of the election remain unchanged, the county clerk shall, upon the warrant of such judge of the superior court, pay the funds so deposited into the county treasury. Such recheck shall be made under the supervision of the county election officials and in co-operation with the parties at interest or their representatives. When irregular ballots of whatever description have been voted, the district election officers shall return all such ballots in a properly secured package indorsed "irregular ballots" and return and file such package with the municipal clerk at the same time the original statement of the results of the election made by them is filed. Such package shall be preserved for 6 months next succeeding such election, and it shall not be opened or its contents examined during that time except by the order of a judge of a court lawfully empowered to direct the same to be opened and examined. At the end of the 6 months, such packages may be opened and the ballots disposed of at the discretion of the official having charge thereof.

PROPOSED REVISION

Title 20. EMINENT DOMAIN

20:1-1. Inability to acquire land by agreement with owner. Except as otherwise provided by law, whenever the proper officers of the state, or of any county, or of any municipal corporation, or of any other corporation, public or private, having power to take land or other property for public use, shall have determined to acquire land or other property pursuant to authority conferred by law and cannot acquire such land or other property by agreement with the owner, whether by reason of disagreement as to the price, or the legal incapacity or absence of the owner, or his inability to convey valid title, or the lack of authority of the party determining to acquire the property to do so by agreement, or by reason of any other cause, the compensation shall be ascertained and paid in the manner directed by this chapter

Source R S 20 1-1, L 1900, c 53, p 79, §1 [C S p 2182, §1]

20:1-2. Summary action for appointment of commissioners. The party exercising the right of taking shall, pursuant to the rules of the supreme court, institute in the superior court a summary action for the appointment of 3 commissioners to fix the compensation to be paid. The papers in the action shall be filed with the superior court as in other actions in that court

Source R S 20 1-2

Note of Reporter. Neither under the present practice nor under the proposed rule is a proceeding for the appointment of condemnation commissioners a judicial function, except as the legislature confers it upon the court. Under R S 20 1-2 the judge of the circuit court was a legislative agent, likewise under the proposed amendment to that statute the court becomes a legislative agent. *Ryan v Housing Authority*, 125 N J L 336, 340 (Sup 1940). The legislature could, if it saw fit, withdraw the power it confers on the court by this statute and delegate it to an administrative agency.

The virtue of the proposed amendment is that the proceeding for the appointment of commissioners would no longer be the anomalous proceeding it is today, it would be just another summary action under Rule 3 79.

The matter of venue in such an action would be governed by Rule 3 3-2, under that rule the venue would have to be laid, as heretofore, in the county where the real property is situate.

In view of the express legislative direction in the prior statute (R S 20 1-3, 20 1-7 and 20 1-10), requiring the papers in the action to be filed in the office of the clerk of the county where the land is situate, it seemed to be desirable to provide that the papers be filed in the superior court clerk's office. Further see proposed new Rule 3 76A-1.

20:1-3. Repeal.

20:1-3.1. Lands, etc., needed for defense or for airports; procedure for obtaining immediate possession by payment of compensation into court. Whenever the state or any commission, official, board or body thereof or any county or municipi-

palty shall determine to acquire lands, easements, rights-of-way or other property to be used by the United States of America, the state of New Jersey or said county or municipality, for furthering national or state defense, or for developing or building airports or providing surface or aerial approaches thereto, by condemnation pursuant to Title 20 of the Revised Statutes, and shall state in its complaint in the summary action for the appointment of commissioners in condemnation the sum of money estimated by said plaintiff to be just compensation for the lands, easements, rights-of-way or other property so to be taken and that it is necessary for furthering national or state defense, or for developing or building airports or providing surface or aerial approaches thereto, that said plaintiff enter into possession of said lands, easements, rights-of-way or other property immediately, which statements shall be verified in the same manner as the other allegations of said complaint, the superior court, on the filing of the complaint, may order that

a Said sum of money may be deposited with the superior court to be held and disposed of for the purposes of and in the manner provided by this act,

b Immediately upon the payment of said sum of money into the superior court the state or said commission, official, board or body thereof or said county or municipality may enter upon and take possession of said lands, easements, rights-of-way or other property for the purposes for which the same were determined to be taken, and

c Notice of said payment of said sum into the superior court shall be given to the owners, occupants and persons interested in the same manner as is required for the service of process in the summary action.

Source L 1942, c 14, p 32, §1, as am L 1947, c 353, p 1147, §1

Note of Reporter. It would be more appropriate if sections 20 1-3 1 to 20 1-3 10 were renumbered 20 1-37 et seq or 20 2-1 et seq

Title of act

An act concerning the ascertainment and payment of compensation for property condemned or taken for public use in certain cases and the right to enter into possession of said property so taken or condemned, and supplementing Title 20 of the Revised Statutes L 1942, c 14, p 32

20:1-3.2. Repeal.

20:1-3.3. Entry upon and taking possession of lands, etc.; waiver of right to abandon proceedings. Upon the making of said order and the payment of said sum of money into the superior court the state or said commission, official, board

or body thereof or said county or municipality may enter upon and take possession of said lands, easements, rights-of-way or other property for the purposes for which the same were determined to be taken, and such entry upon and taking possession of said lands, easements, rights-of-way or other property shall constitute a waiver of the right of the state or said commission, official, board or body thereof or said county or municipality to abandon the proceedings taken to condemn the same, then or thereafter

Source L 1942, c 14, p 33, §3

20:1-3.4. Payment and distribution of award out of fund paid into court. The amount of the award made in said condemnation proceedings either by the report of the commissioners therein or by final judgment entered in any proceeding on appeal from the report of the commissioners, as the case may be, shall be payable out of the fund so paid into the court, which shall be distributed, among the claimants thereto, in the same manner as payment and distribution is made of moneys paid into the court in proceedings in condemnation, pursuant to Title 20 of the Revised Statutes. The report of the commissioners filed or the final judgment entered in any proceedings on appeal from such report in the proceedings for condemnation, as the case may be, shall be plenary evidence of the right of the owners, occupants and persons interested to recover the amount awarded thereby first out of said fund so deposited in the court

Source L 1942, c 14, p 33, §4

20:1-3.5. Recovery of excess, interests and costs if award exceeds fund paid into court. If the amount of said award shall exceed the amount of said fund, the said report of the commissioners or said final judgment, as the case may be, shall be plenary evidence of the right of the owners, occupants and persons interested to recover the amount of the excess of said award, over and above the amount of said fund, with interest and costs, in a civil action in any court of competent jurisdiction to be instituted against the plaintiff after neglect to pay the same into the court for 20 days after the time of the filing of said report or the entry of said final judgment, as the case may be, but shall not be enforceable as a lien upon the lands, easements, rights-of-way or other property taken and any improvements thereon

Source L 1942, c 14, p 34, §5

20:1-3.6. Notice of payment of excess, interest and costs, into court. Written notice of the payment of any such excess with interest and costs into the court shall be given to the owners, occupants and persons interested in the same manner as is required by section 20 1-15 of the Revised Statutes in cases where the entire award is paid into said court

Source L 1942, c 14, p 34, §6

20:1-3.7. Pro rata distribution of fund and

excess to claimants. In event that the amount of said fund shall be less than the amount of said award, and said excess, with interest and costs, shall not be paid into the court, as hereinbefore provided, distribution of said fund shall be made pro rata to the various claimants there-to according to their various claims, as allowed by the court, and the court shall by its order, at the same time, determine the amounts payable to each of such claimants out of such excess, with interest and costs, which determination shall be conclusive evidence of the rights of the claimants therein

Source L 1942, c 14, p 34, §7

20:1-3.8. Repayment when award, with interest and costs, is less than fund paid into court. In the event that the amount of said award, with interest and costs, shall be less than the fund so paid into the court the excess of said fund shall be repaid to the state or said commission, official, board or body thereof or said county or municipality by order of the court upon the petition of the state or said commission, official, board or body thereof or said county or municipality

Source L 1942, c 14, p 35, §8

20:1-3.9. Written agreement to accept fund deposited as full compensation; effect. In event that all of the owners, occupants and persons interested shall agree in writing, duly acknowledged, to accept the said sum so deposited in the court as full compensation for said lands, easements, rights-of-way or other property, said agreement in writing shall be conclusive evidence of the value of said lands, easements, rights-of-way or other property for the purposes of said award and conclusive evidence of the right of said owners, occupants and persons interested to receive said fund upon the making of said award

Source L 1942, c 14, p 35, §9

20:1-3.10. Recovery of taxes or other municipal liens or charges. The provisions of this act shall not be construed to prevent any municipality from retaining from or recovering out of any moneys paid by it into the court, under the provisions of this act, any sum or sums due to such municipality, for taxes or other municipal liens or charges against any property taken in condemnation

Source L 1942, c 14, p 35, §10

20:1-4. Notice of lis pendens; recording. A notice of the pendency of the action, which notice shall name the parties interested and describe the real estate taken, shall be recorded in the same manner and place for the same fees as notices of lis pendens in other civil actions. In default of such recording, persons acquiring an interest in the property pending the proceedings without actual notice thereof shall not be bound thereby.

Source R S 20 1-4, L 1900, c 53, p 80, §3 [C S p 2183, §3], as am L 1931, c 365, p 892, §2

20:1-5. Repeal

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20:1-6. Appointment of commissioners; notice of hearing. On the trial of the summary action, the superior court shall appoint 3 disinterested freeholders, residents of the county where the land or property to be taken is situate, commissioners to examine and appraise the land or property and to assess the damages on at least 6 days' notice to be given to the persons interested in the property in such manner as the court shall direct.

Source R S 20 1-6, L 1900, c 53, p 81, §5 [C S p 2184, §5], as am L 1931, c 365, p 893, §4

20:1-7. Time for filing report; extension of time. The court shall, in the judgment of appointment, fix the date on or before which the commissioners must file their report, and may by order for good cause extend the time

Source R S 20 1-7, L 1900, c 53, p 81, §5 [C S p 2184, §5], as am L 1931, c 365, p 893, §4

20:1-8. Appeal in lieu of prerogative writ, to review judgment appointing commissioners; stay. The judgment appointing commissioners may, on a proper case made therefor, be reviewed by an appeal, in lieu of a prerogative writ, taken to the appellate division of the superior court. The appellate division may, on motion as in any other application for ad interim relief on such an appeal, stay the taking of possession of the land or other property after the award and payment, and, if possession is permitted, may limit and prescribe the uses to which the property may be applied, pending the appeal

Source R S 20 1-8, L 1900, c 53, p 86, §16 [C S p 2188, §16], as am L 1931, c 365, p 896, §8

20:1-9. Commissioners; oath; duties. The commissioners shall take and subscribe an oath faithfully and impartially to examine the matter in question and make a true report according to the best of their skill and understanding. Thereafter they shall meet at the time and place appointed and proceed to view and examine the land or other property and make a just and equitable appraisal of the value of the same, and an assessment of the amount to be paid by the plaintiff for the land or other property and damage aforesaid, as of the date of the filing of the complaint

Source R S 20 1-9, L 1900, c 53, p 81, §6 [C S p 2184, §6], as am L 1931, c 365, p 894, §5

20:1-10. Report of commissioners; filing; failure to file within time limited. The report of the commissioners shall be made in writing under the hands of the commissioners or any 2 of them and filed by them with the superior court within the time limited by the court, to remain of record therein

If the report is not made within the time limited, the powers of the commissioners shall cease, and an application may be made to the court for the appointment of new commissioners on such notice as the court may direct

Source R S 20 1-10, L 1900, c 53, p 81, §6 [C S p 2184, §6], as am L 1931, c 365, p 894, §5

20:1-11. Death or disability of commissioner. In case any commissioner shall die pending the action, or is disqualified, or is unable to act, or shall fail or refuse to act and perform the duties of appointment, the other 2 commissioners shall proceed to perform the duties of their appointment with the same powers as if all 3 were acting

Source R S 20 1-11, L 1900, c 53, p 81, §6 [C S p 2184, §6], as am L 1931, c 365, p 894, §5

20:1-12. Plaintiff may take possession upon paying award. Upon the filing of the report of the commissioners, and upon payment or tender of payment of the amount awarded as provided in this chapter, the plaintiff may enter upon and take possession of the land or other property for the purposes for which the same was authorized to be taken

The report of the commissioners, together with the record in the action appointing them, or a copy thereof certified by the clerk of the court and proof of payment or tender of the amount awarded shall be plenary evidence of the right of the plaintiff to have, hold, use, occupy, possess and enjoy the land and other property

Source R S 20 1-12, L 1900, c 53, p 82, §7 [C S p 2184, §7], as am L 1931, c 365, p 895, §6

20:1-13. Right of owner to recover amount awarded; lien. The report of the commissioners together with the complaint and the judgment and orders entered in the action appointing them, or a copy thereof certified by the clerk of the court, shall be plenary evidence of the right of the owner of the land or other property taken to recover the amount awarded with interest and costs, in a civil action in any court of competent jurisdiction to be instituted against the plaintiff after neglect to pay the same for 20 days after the filing of the report, and shall from the time of filing the report be enforceable as a lien upon the land or property taken and any improvements thereon

Source R S 20 1-13, L 1900, c 53, p 82, §7 [C S p 2184, §7], as am L 1931, c 365, p 895, §6

20:1-14. Taxation of fees, costs and expenses. The court shall, upon application of either party on reasonable notice, tax and allow such costs, fees and expenses of the commissioners, clerks and other persons performing any of the duties prescribed in sections 20 1-1 to 20 1-13 of this title as he shall think proper, which shall be paid by the plaintiff

Source R S 20 1-14, L 1900, c 53, p 82, §7 [C S p 2184, §7], as am L 1931, c 365, p 895, §6

20:1-15. Payment of award or judgment into court; notice. In case the party entitled to receive the amount assessed by the commissioners or the amount of the judgment entered on or after an appeal from their report shall upon tender thereof refuse the same, or shall be out of the state or under any legal disability, or in case several parties being interested in the fund shall not agree as to the distribution thereof, or in case the lands or other property taken

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are encumbered by mortgage, judgment or other lien, or in case for any other reason the plaintiff cannot safely pay such amount to any person, in all such cases the superior court on petition may order the deposit with the court of the amount awarded, and shall order the distribution of the same according to law, on the application of any person interested therein. Written notice given to the owner or owners and to persons interested that such money has been so deposited with the court shall have the same effect as if the money mentioned in the award or judgment, with costs, had been actually tendered to the owner or persons entitled thereto. Where notice cannot be personally served, notice by advertisement, in such manner as the court shall direct, shall have the same effect.

Source: R S 20 1-15, L 1900, c 53, p 82, §8 [C S p 2185, §8].

20:1-16. Appeal to superior court; time; notice. The plaintiff or owner of any of the land or other property may appeal from the report of the commissioners to the superior court, whether or not an appeal has been or may be given by the statute conferring the power to take land or property for public use. The appeal shall be taken by filing with the court a notice of appeal within 10 days after the day fixed by the court for the filing of the commissioners' report. The proceedings on appeal shall be governed by the rules of the supreme court.

Source: R S 20 1-16, L 1900, c 53, p 83, §9, as am L 1909, c 150, p 225, §1 [C S p 2185, §9].

20:1-17. Extending time for appeal. The superior court, on application of either party, for good cause shown, may extend for 30 days the time within which a notice of appeal may be filed in proceedings instituted under this chapter.

Source: R S 20 1-17, L 1929, c 359, p 798, §1, suppl L 1900, c 53, p 79.

20:1-18. Proper parties to appeal and subsequent proceedings. If the proceedings necessary in carrying out the appeal to the superior court and for the trial and final disposition thereof, and in review, are taken by or against the persons in possession of the property and against the persons, if any, designated in the complaint in the action for the appointment of commissioners, who shall have appeared personally or by attorney before the commissioners, they shall be sufficient and binding on all the owners and parties interested, known or unknown, named or designated in the complaint. All notices on the appeal or subsequent proceedings shall be sufficient if served upon the persons in possession, and such persons, if any, as shall have appeared before the commissioners or their attorneys, but parties who have not so appeared may on motion pursuant to the rules of the supreme court be admitted to participate therein.

Source: R S 20 1-18, L 1900, c 53, p 83, §10 [C S p 2186, §10], R S 20 1-19, L 1900, c 53, p 83, §11 [C S p 2186, §11], R S 20 1-20, L 1900, c 53, p 84, §12 [C S 2186, §12], R S 20 1-21, L 1900, c 53, p 34, §12 [C S p. 2186, §12].

20:1-22. Trial of issue; judgment; costs. On the trial of the appeal, the jury shall assess the value of the land or other property taken and the damages sustained.

If the jury shall find a greater sum than the commissioners awarded, judgment with costs shall be entered against the plaintiff and execution awarded therefor. If the jury shall be applied for by the owner and shall find a less sum than the commissioners awarded, costs shall be paid by the appellant and either deducted out of the sum found by the jury or execution awarded therefor, as the court shall direct.

Source: R S 20 1-22, L 1900, c 53, p 85, §13, as am L 1903, c 173, p 342, §2 [C S p 2187, §13].

20:1-23. Recovery of excess of award over judgment when paid before appeal. Where before the trial of the appeal, payment of the amount awarded by the commissioners has been made to the owner, or into court, as provided in section 20 1-15 of this title, and the amount found by the jury shall be a less sum than that awarded by the commissioners, the plaintiff may recover back the difference between the amount paid and the amount found by the jury. On proof of such payment, judgment for such difference may be entered by the court in favor of the plaintiff against the owner. Execution therefor may be issued against any owner, and the plaintiff shall have such further remedies as may be appropriate for the recovery of the amount adjudged to be due.

Source: R S 20 1-23, L 1900, c 53, p 85, §13, as am L 1903, c 173, p 342, §2 [C S p 2187, §13].

20:1-24. Effect of appeal on right to take land; appeal not barred by acceptance of award. The taking of an appeal by either party shall not prevent the plaintiff from taking the land or other property upon filing the report of the commissioners and making tender and payment or deposit with the superior court, as provided in section 20 1-15 of this title, of the award at any time before the verdict of the jury on appeal. The party entitled to the award may receive the same without being barred from his appeal.

Source: R S 20 1-24, L 1900, c 53, p 85, §14 [C S p 2187, §14].

20:1-25. Payment of amount found by jury; right to possession; recovery of amount found by jury. The amount found by the jury or so much thereof as shall not have been paid, shall be tendered and paid or deposited with the court in like manner as provided in section 20 1-15 of this title for the payment of the award.

If possession shall not have been taken before the finding by the jury the plaintiff, upon payment as aforesaid or deposit with the court of the amount due as found by the jury, may take possession of the lands or other property.

The persons entitled to receive payment of the amount found by the jury may have execution therefor, and shall also be entitled to the same lien and remedies as are provided in sec-

tion 20 1-13 of this title for the collection of awards of commissioners

Source R S 20 1-25, L 1900, c 53, p 85, §14 [C S p 2187, §14]

20:1-26. Right of plaintiff to possession upon paying judgment. If the plaintiff or owner takes an appeal or other proceedings to review the judgment founded on the verdict of the jury, the plaintiff may, upon payment or tender of payment of the amount of the judgment to the party entitled to receive the same, as provided in this chapter, enter upon and take possession of the land or other property for the purposes for which the same was authorized to be taken

The judgment or a copy thereof, certified by the clerk of the court, and proof of payment or tender of the amount of the judgment, shall be plenary evidence of the right of the plaintiff to have, hold, use, occupy, possess and enjoy the land and other property

Source R S 20 1-26, L 1912, c 31, p 57, §1 [1924 suppl §66-18a], suppl to L 1900, c 53

Source R S 20 1-27, L 1912, c 31, p 57, §2 [1924 suppl §66-18b], suppl to L 1900, c 53, p 79

20:1-28. Reversal on appeal or review of judgment; recovery of deficit or excess. If on the appeal or other proceeding to review such judgment, the judgment is reversed and on the final determination of the cause, evidenced by the judgment finally entered therein, a lesser sum is adjudged to be due to the person entitled thereto than the sum theretofore paid by the plaintiff either to the person entitled thereto or deposited with the court, as aforesaid, the plaintiff may recover back the difference between the amount paid and the amount adjudged to be due by the final judgment. On proof of said payment judgment for such difference may be entered by the court in favor of the plaintiff against the person to whom the payment was made, and execution may issue thereon

If the amount of the judgment as finally entered is for a greater amount than that so paid, the owner shall be entitled, on proof of the facts, to have judgment entered by order of the court, against the plaintiff, for the excess, and execution may issue thereon

The plaintiff and owner and persons entitled to said moneys shall have such further remedies as may be appropriate for the recovery of the amount adjudged due in either case

Source R S 20 1-28, L 1912, c 31, p 58, §3 [1924 suppl. §66-18c], suppl to L 1900, c 53, p 79

20:1-29. Entry by state, county or municipality before making compensation. Nothing in this chapter shall limit or restrict any right which has been or may be granted to any municipal corporation, or to the state, or to the authorities of the county or to any other of the public agencies of the state to enter upon and take property in advance of making compensation therefor

Source R S 20 1-29, L 1900, c 53, p 85, §15, as am L 1906, c 69, p 99, §1 [C S p 2187, §15], L 1931, c 365, p 896, §7, L 1932, p 485, §1

20:1-30. Abandonment of condemnation proceedings. Any proceeding to condemn heretofore or hereafter taken under this chapter may be abandoned at any time before the filing of the report of the commissioners, or at any time within 20 days after filing of the report of the commissioners, or if the issues shall be tried by jury within 20 days after the rendering of the verdict of the jury, upon payment to the owners and other parties who have appeared before the commissioners or the jury of their reasonable costs, expenses and counsel fees to be determined by the superior court, and upon filing a discharge of the lien of the notice of his pendens, provided, that any proceedings to condemn heretofore or hereafter taken under this act by a housing authority may be abandoned prior but not subsequent to the vesting of title to the property in the housing authority

Source R S 20 1-30, as am L 1938, c 21, p 92, §1, L 1900, c 53, p 85, §15, as am L 1906, c 69, p 99, §1 [C S p 2187, §15], L 1931, c 365, p 896, §7, L 1932, c 213, p 485, §1

Note of Reporter The amendment of 1938, cited to the text, added the words "heretofore or hereafter" following the opening words "Any proceeding to condemn" and, further, added at the end of this section the proviso relating to abandonment of proceedings taken by a housing authority

Section 3 of the Act of 1938 provided that the act should take effect immediately

20:1-31. Further orders or proceedings; amendments. The superior court, upon any hearing before or after an appeal to the court is filed, shall make such further orders and direct such further proceedings and permit such amendments of the description, proceedings and plans as may appear reasonable or as may promote the public purposes for which the power to condemn was conferred or the fair trial of the issue on the merits

Source R S 20 1-31, L 1900, c 53, p 86, §17 [C S p 2188, §17]

20:1-32. Land or property taken lying in 2 or more counties. Whenever any land or other property taken for public use shall lie or be in 2 or more counties, the commissioners appointed shall be residents of the county in which the greater part in value of the land or other property is situate and the venue in all proceedings shall be laid in the county wherein the greater part in value of the land or other property is

Source. R S 20 1-32, L 1903, c 173, p 342, §1 [C S p 2189, §18], as am L 1928, c 91, p 197, §1, suppl to L 1900, c 53, p 79

20:1-33. Application of chapter. Where land is taken for public improvement and payment of the award for the land taken and damages is authorized by statute to be set off against or made wholly or partially in benefits to be assessed for the same improvement, the municipal corporation or other public body taking land for a public improvement may elect to proceed under such statute and on such election the procedure prescribed by this chapter and the rules of court shall not apply to such taking.

Source R S 20 1-33, L 1900, c 53, p 86, §17 [C S p 2188, §17]

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20:1-34. Condemnation of public utility property by municipality; after acquired property and improvements. Where the property of a public utility company is condemned by a municipality and payment or tender of payment of the amount of the award has been made as provided in this chapter, the municipality, in addition to having the right to take possession of the property so condemned, may enter upon and take possession of the property which the company has acquired and any improvements made in its plant between the time of filing the complaint and the payment or tender of the award, in advance of making compensation therefor, in any case where it cannot acquire said property and improvements by agreement with the owner, either by reason of disagreement as to price, or the legal incapacity or absence of the owner, or his inability to convey valid title, or by reason of any other cause

Upon a municipality exercising this right and entering upon and taking the after acquired property and improvements in advance of making compensation therefor, the municipality shall file with the court and present to the commissioners appointed in the original proceedings, a complaint demanding that they fix the compensation to be paid the owner for the after acquired property and improvements. Thereupon the commissioners shall make a just and equitable appraisal of the value of all such after acquired property and improvements and damages if any, in accordance with this chapter. Upon the making of the award the municipality shall pay the amount thereof, unless an appeal is taken therefrom to the superior court as provided for in section 20 1-16 of this title, in which case the amount of the award shall be paid upon final determination thereof

This section shall not repeal or affect the provisions of sections 40 62-118 to 40 62-125 of the title Municipalities and Counties

Source R S 20 1-34, L 1930, c 222, pp 1002, 1003, §§1, 2, suppl to L 1900, c 53, p 79

20:1-35. Sidewalks; lands condemned for highways to include; condemnation of lands for sidewalks. Unless otherwise particularly specified in the resolution, map, complaint and other proceedings for the acquiring of land or rights of way, or both, for public highways in the manner set forth in this chapter the boundary lines of the said road and highway, or portion thereof so taken and acquired, shall include within the boundaries thereof all land necessary and desired for the locating of sidewalks or other space then needed, or thereafter to be utilized as sidewalk, and whether the same shall then or thereafter be intended to be paved for use by pedestrians as sidewalks

All land lying outside of and adjoining the outer boundary lines of any public road or highway, the boundaries of which have been established according to law prior to April 28, 1931, and which lands or the use thereof shall be required for

the purpose of laying out, grading and constructing sidewalks for the use of pedestrians, shall be taken, acquired and occupied from and as against the rightful owner thereof, only in the manner and under the proceedings set forth in this chapter and upon paying compensation therefor, to be fixed and determined in the manner prescribed by this chapter

Nothing in this section shall limit or impair or deprive any municipality or county of the right by proper and appropriate action to ordain or order the grading and the construction of a paved surface for any sidewalk above referred to, and the assessing of the proportionate cost thereof, against the owner of the property thereby improved, as a local public improvement in the manner now provided by law

Source R S 20 1-35, L 1931, c 378, p 982, §1, suppl to L 1900, c 53, p 79

20:1-36. Condemnation by a housing authority. At any time on or after the filing of a complaint by a housing authority, and before the entry of final judgment, such housing authority may file with the clerk of the superior court, a declaration of taking signed by the duly authorized officer or agent of the housing authority declaring that all or any part of the property described in the complaint is being taken for the use of the housing authority. The said declaration of taking shall be sufficient if it sets forth

1 A description of the property, sufficient for the identification thereof, to which there may be attached a plan or map thereof;

2 A statement of the estate or interest in said property being taken,

3 A statement of the sum of money estimated by the housing authority to be just compensation for the property taken, which sum shall be not less than the last assessed valuation for tax purposes of the estate or interest in the property to be taken

From the filing of the said declaration of taking and the deposit in court to the use of the persons entitled thereto of the amount of the estimated compensation stated in said declaration, title to the property described as being taken by said declaration shall vest in the housing authority (free from the right, title, interest of lien of all persons), and said property shall be deemed to be condemned and taken for the use of the housing authority and the right to just compensation for the same shall vest in the persons entitled thereto. Upon the filing of the declaration of taking, the court shall designate a day (not exceeding 20 days after such filing, except upon good cause shown) on which the persons in possession shall be required to surrender possession to the authority

The ultimate amount of compensation shall be determined pursuant to Title 20. If the amount so fixed shall exceed the amount so deposited in court by the housing authority or otherwise paid to the persons entitled thereto, the court shall enter judgment against the housing authority in

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the amount of such deficiency, together with interest at the legal rate on such deficiency from the date of the vesting of title to the date of the entry of the final judgment (subject, however, to abatement for use, income, rents or profits derived from such property by the owner thereof subsequent to the vesting of title in the housing authority), and the court shall order the authority to deposit the amount of such deficiency in court. The money deposited into court by an authority shall be secured in such manner as may be directed by the court and shall be disbursed by the court to the persons found to be entitled thereto by the final award or judgment of the court. In case the amount deposited in court by the authority as the estimated compensation for the property shall exceed the amount of the final award or judgment, such excess shall be returned to the authority.

Except as hereinabove provided with reference to the declaration of taking, the eminent domain proceedings applicable to a housing authority shall not be altered by this section.

Source L 1938, c 21, p 93, §2

Note of Reporter Section 3 of the Act of 1938 provided that the act should take effect immediately.

20:2-1

to

20:2-18. Repealed L 1938, c 103, p 223, §1 Eff April 28, 1938

Note of Reporter Sections 20 2-1 to 20 2-17, as incorporated in the Revised Statutes, were derived from L 1920, c 295, pp 526-532, §§1-12, as am L 1921, c 180, p 447, §1 [1924 supp §§**192-85 to **192-96]

Section 20 2-18 was derived from L 1885, c 239, p 309 [C S p 2190, §21], §3 and L 1888, c 47, p 74, §3 [C S p 2190, §22]

Sections 20 2-1 to 20 2-17 related to the acquisition or condemnation of lands "for any public purpose or for the construction upon, in or under such lands of any public work", by any state agency which was defined to include "any state commission, official, board or body of the state but not any county or municipality"

Section 20 2-18 provided that all streets, highways, ways, rights and easements on lands acquired by the state or any agency thereof for exclusive public use shall become vacated and void.

Condemnation of land or other property for public use by the state or its agencies under the general condemnation law, see chapter 1 of this title.

PROPOSED REVISION

Title 23. FISH AND GAME, WILD BIRDS AND ANIMALS

23:7-2. Arrest of offender; trial; failure to show permit. A person violating the provisions of section 23 7-1 of this title may be arrested without warrant by the owner, occupant, lessee, licensee or an officer of the law and taken for trial before any magistrate who shall have jurisdiction to try such offender and pronounce sentence.

In a prosecution for violation hereof, the failure of the defendant to produce a written permit to hunt and fish on the lands on which he is charged with trespassing, signed by the owner, occupant, lessee or licensee thereof shall be prima facie proof that he was forbidden so to trespass.

23:10-2. Jurisdiction and venue. Every county district court and every municipal court, hereinafter in this chapter referred to as the "court", shall, except as otherwise specifically provided, have jurisdiction to try and punish any person violating any provision of this title, any provision of any law supplementary thereto or any provision of the state fish and game code, and every penalty prescribed for such violation may be enforced and recovered before such court either in the county where the offense is committed or where the offender is first apprehended or where he may reside. As amended L 1948, c 448, p 1826, §78.

23:10-3. Who may institute proceedings. Proceedings for the recovery of penalties for the violation of any provision of this title, any provision of any law supplementary thereto, or any provision of the state fish and game code shall be brought in the name of the state, by a duly commissioned warden, deputy warden, police officer, constable or a member of any regularly incorporated fish and game protective association, or the fish and game protector as prosecutor, and no such proceeding shall be instituted by any other person unless specifically authorized by law. As amended L 1948, c 448, p 1826, §79.

23:10-4. Process and proceedings on Sunday. Proceedings under this chapter may be instituted on any day of the week including Sunday and process may be served on Sunday.

23:10-5. Arrest on view without warrant; summary hearing; interference with or resisting officer. Any constable, police officer, fish and game warden, protector, or deputy warden, or any officer or member of any incorporated game protective society may, for a violation of any provision of this title, or any provision of any law supplementary thereto, or of any provision of the state fish and game code committed within the view of any such officer or person, arrest, without warrant, the offender. Any person or persons who shall, by threat, menace or force,

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or in any manner, attempt to deter or prevent any fish and game warden or other person authorized to make arrests for violation of the fish and game laws of this state, or any provision of any law supplementary thereto, or any provision of the state fish and game code from enforcing or carrying into effect any provisions of this title, or any provision of any law supplementary thereto, or any provision of the state fish and game code or who shall resist arrest or the seizure of boats or nets or other apparatus illegally used, shall be subject to a fine of \$100 00 As amended L 1948, c. 448, p 1827, §80

23:10-6. Repeal See Rule 7 12A-2

23:10-7. Repeal See Rule 7 12A-2.

23:10-8. Issuance of warrant. The court shall, upon receiving a complaint in writing, duly verified, of the violation of any provision of this title, or any provision of any law supplementary thereto, or any provision of the state fish and game code, issue a warrant directed to any constable, police officer, fish and game warden, fish and game protector, or deputy warden commanding him to cause the person so complained of to be arrested and brought before such court As amended L. 1948, c. 448, p. 1828, §83.

23:10-9. Violations by corporations; summons; service. The court, shall, upon receiving a complaint in writing duly verified, of the violation of any provision of this title, or any provision of any law supplementary thereto, or any provision of the state fish and game code by any corporation, issue a summons directed to any constable, police officer, fish and game warden, protector or deputy warden, requiring such corporation to be and appear before such court on the day therein named, to answer the complaint

Such summons shall be served in accordance with the rules of practice and as amended L 1948, c 448, p 1828, §84

23:10-10. Repeal See Rule 7 12A-7

23:10-11. Repeal See Rule 7 12A-9.

23:10-12. Incriminating testimony. No person shall be excused from giving evidence in any proceeding under this chapter, on the ground that it might tend to convict him or render him liable to prosecution hereunder, but such evidence shall not be received against him in any such prosecution

23:10-13. Repeal See Rule 7 12A

23:10-14. Commitment for nonpayment of penalties. If any person shall fail to pay the penalty or penalties so imposed, together with the costs of proceedings, the court shall commit him to the common jail of the county where such conviction is had, for a period not exceeding 90 days, or until the penalty and costs are paid

23:10-5. Release on probation; payment of fine

in installments. If the record of a person convicted of a violation of this title, or any provision of any law supplementary thereto, or any provision of the state fish and game code shall, in the judgment of the court in which the conviction is had, so justify, the court may order him to be released on probation under the care of the probation officer of the county, the payment of a fine and costs of proceedings to be paid to the probation officer in weekly installments of such sum as he may determine This money shall inure to the benefit of the division of fish and game, and the probation officer shall account for and turn over the same or any other money collected by him on account thereof to the division of fish and game for its uses and purposes As amended L 1948, c 448, p 1830, §86.

Effective April 1, 1949

23:10-16. Judgment against corporation; docketing. A judgment obtained against a corporation, under the provisions of this chapter, may be docketed in the office of the clerk of the superior court in the county in which such judgment is obtained and like proceedings shall be had for the collection of the same as if the judgment had been rendered in such superior court

23:10-17. Powers and fees for service of process of certain officers. The fish and game protector, fish and game wardens and deputy wardens shall have the same power as constables and be entitled to the same fees for the service of process in proceedings under this chapter as are provided by law for constables in the court in which the proceedings are had

23:10-18. Fees and costs. In proceedings under this chapter the prevailing party shall recover costs against the other, and the fees and costs to be allowed therein shall be those provided by law for such proceedings in the court in which the proceedings are had

23:10-19. Use of moneys recovered for violations. All moneys recovered for violations of this title, or any provision of any law supplementary thereto, or any provision of the state fish and game code shall, except as otherwise specifically provided, be paid to the division of fish and game for its use and purposes

Any court or person receiving such moneys for violations of this title, or any provision of any law supplementary thereto, or any provision of the state fish and game code, who fails to forward the same to the division of fish and game within 30 days after receipt of same shall be guilty of a misdemeanor As amended L 1948, c 448, p 1830, §87.

23:10-20. Searches and seizures; immunity from civil suit. A member of the fish and game council, the fish and game protector or a warden may, without warrant, search and examine any

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boat, conveyance, vehicle, fish box, fish basket, game bag, game coat or other receptacle for game and fish, when he has reason to believe that a provision of this title, or any law supplementary thereto, or the state fish and game code has been violated, and shall seize and take possession of any bird, animal or fish unlawfully caught, taken, killed, had in possession or under control, shipped or about to be shipped

A court, upon receiving proof of probable cause for believing in the concealment of a bird, animal or fish so unlawfully caught, taken, killed, had in possession or under control, shipped or about to be shipped, shall issue a search warrant and cause a search to be made in any place, and to that end, may, after demand and refusal, cause any building, inclosure or car to be entered, and any apartment, chest, box, locker, crate, basket or package to be broken open and its contents examined by a member of the fish and game council, the fish and game protector or a warden. All birds, animals or fish, seized by a member of the council, the protector or a warden shall be disposed of in such manner as the court before which the offense is tried directs

The member of the council, protector or warden shall not be liable for damages by reason of any such search or the destruction of any nets or fishing apparatus in accordance herewith As amended L 1948, c 448, p 1830, §88

23:10-21. Forfeiture of apparatus; procedure.

A person found using a seine, gill, drift, anchor or sink net, fixed net, trap, pot, pound, set line, fyke, weir or other apparatus for the taking of fish in any waters of this state in violation of this title, or any provision of any law supplementary thereto, or any provision of the state fish and game code shall, in addition to the penalties prescribed, forfeit the same.

All constables, sheriffs, fish and game wardens and the fish and game protector shall, and any other person may, seize and secure the same, and shall immediately thereafter give notice thereof to a district court of the county wherein, or to the municipal court within the jurisdiction of which, the seizure is made, who shall, at an appointed time and place, summarily hear and determine whether the same was unlawfully used, and if it so appears, make an order directing the confiscation and forfeiture of the same to the division's use, which division may dispose thereof at its discretion As amended L. 1948, c 448, p 1831, §89.

23:10-22. Appeal; notice of; payment of costs; bond. Any party to a proceeding instituted under this chapter may appeal from the judgment or sentence of the district court, or municipal court to the county court of the county in which the proceeding was had in accordance with the rule relating to appeals from inferior courts of limited criminal jurisdiction.

23:10-23. Rule 2 11 supersedes this section

PROPOSED REVISION

Title 24. FOOD AND DRUGS

24:4-1. Confiscation; summary proceeding. Any food, drug, cosmetic or device, if not in transit from one state to another, that is offered or exposed for sale, or had in possession with intent to distribute or sell or is intended for distribution or sale in violation of any provision of this subtitle, may be confiscated by a summary proceeding As amended L 1939, c 320, p 773, §10

24:4-2. Venue of proceeding. The county court, or district court having jurisdiction in the county in which such food, drug, cosmetic or device is found or any judge of any such court, shall have jurisdiction to hear and determine such proceeding As amended L 1939, c 320, p. 773, §11.

24:4-3. Complaint. The proceeding shall be by complaint, verified by affidavit, which may be made on information and belief in the name of the state department or the local board, against the article to be confiscated.

24:4-4. Contents of complaint. The complaint shall contain

- a A particular description of the article,
- b The name of the place where the article is located,
- c The name of the person in whose possession or custody the article was found, if such name is known to the person making the complaint or can be ascertained by reasonable effort, and
- d A statement as to the manner in which the article is adulterated or misbranded or the characteristics which render its distribution or sale illegal

24:4-5. Issuance of warrant. Upon the filing of the verified complaint the court or judge shall issue a warrant directed to the sheriff or a constable of the county, commanding such officer to seize and take in his possession the article described in the complaint, and bring the same before the court or judge, who issued the warrant and to summon the person named in the warrant, and any other person who may be found in pos-

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session of the article, to appear at the time and place therein specified

Note of Reporter The statutory procedure prescribed in this quasi-criminal action is peculiar to this type of action, and is not and could not practicably be covered by the rules of procedure. An examination of the federal rules shows that the problem of procedure in the federal seizure cases is left to the judicial code. The rules would become unworkable, if a special rule had to be passed to cover those special statutory procedures that cannot be fitted into the general rules

24:4-6. Service of warrant. Any such person shall be summoned by service of a copy of the warrant in the same manner as a summons issuing out of the court in which the warrant has been issued, and when the warrant is issued by a justice of the peace it shall be served upon any such person in the same manner as a summons issuing out of the small cause court

24:4-7. Time of hearing; amendment of complaint. The hearing upon the complaint shall be at the time and place specified in the warrant, which time shall not be less than 5 days or more than 15 days from the date of issuing the warrant, but if the execution and service of the warrant has been less than 3 days before the return day of the warrant, either party shall be entitled to a reasonable continuance

24:4-8. Claims under oath. Any person who appears and claims the food, drug, cosmetic or device seized under the warrant shall be required to file a claim under oath. As amended L 1939, c 320, p. 773, §12.

24:4-9. Sale or destruction of condemned article. If upon the hearing it shall appear that the article was offered or exposed for sale, or had in possession with intent to distribute or sell, or was intended for distribution or sale in violation of any provision of this subtitle, it shall be confiscated and disposed of by destruction or sale as the court, judge, or justice of the peace may direct, but no such article shall be sold contrary to any provision of this subtitle

24:4-10. Return of goods; bond. In case the article seized is not injurious to health and is of such a character that when properly marked or branded its sale is not prohibited by this subtitle, the court or judge, may order such article delivered to the owner upon the payment of the costs of the proceeding and the execution and delivery to the state department or local board instituting the proceeding, as obligee, of a good and sufficient bond to the effect that such article shall not be sold or otherwise disposed of contrary to the provisions of this subtitle or the laws of any state, territory, district of the United States, or of the United States

24:4-11. Summary destruction of perishable food. The state department or the local board shall condemn any food of a perishable nature and cause it to be destroyed or disposed of in such a manner as to make it impossible to be thereafter used for human food, whenever found

a Exposed or offered for sale, or had in possession with intent to sell, in violation of any provision of this subtitle, or

b In a state of rotteness or putrefaction, or in any condition which renders it unwholesome or unfit for use for human food

24:4-12. Adulterated or misbranded foods, drugs, etc.; marking; detaining. Whenever an agent of the state department or of a local board of health finds, or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this subtitle, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission. Added L 1939, c. 320, p 774, §14

Approved August 8, 1939 Effective January 1, 1940

24:10-21. Penalties; recovery; jurisdiction. Any person violating any of the provisions of sections 24 10-2, 24 10-3, 24 10-4, 24 10-7, 24 10-8, or 24 10-19 of this title shall be liable to a penalty of \$200 00, and any person violating any of the provisions of sections 24 10-11, 24 10-14, 24 10-15, or 24 10-16 of this title shall be liable to a penalty of not less than \$25 00 nor more than \$100 00

Such penalties shall be recovered in an action at law in the name of the state department of health or a local board of health, as the case may be. Such action may be maintained in any county district court or municipal court and jurisdiction is conferred upon such courts to hear and determine actions brought hereunder

24:10-42. Injunction. If any person shall violate any provision of section 24 10-39 of this title in the distribution or sale of milk or cream, or the keeping or feeding of cows, the state department may file a complaint in the superior court in the name of the state, on the relation of the department, for an injunction to prohibit such violation, and for such other or further relief as the superior court shall deem proper

24:10-52. Summary proceedings; jurisdiction. Every county district court and every county court of any county is hereby empowered to issue process at the suit of the department as plaintiff, for the recovery of penalties

24:10-53. Imprisonment for nonpayment of penalty. Such court shall, if judgment be rendered for the plaintiff, cause any such defendant who may refuse or neglect to forthwith pay the amount of judgment rendered against him, and

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all costs and charges incident thereto, to be committed to the county jail for a period of not less than 5 nor more than 90 days in the case of a first offense, and not less than 10 nor more than 200 days for a second and each subsequent offense

24:10-100. Summary proceedings; complaint; process; imprisonment for nonpayment of penalty. Every county district court, and every municipal court in any city or municipality where the defendant may be apprehended or where he may reside, is hereby empowered to issue process, directed to any constable, police officer or member of the New Jersey state police, commanding him to cause the person so complained of to be arrested and brought before such county district court or municipal court or magistrate

If any person shall fail to pay the penalty so imposed together with all costs, such district court, municipal court or magistrate shall commit him to the common jail of the county wherein such conviction is had for a period not exceeding 90 days or until the penalty and costs are paid

24:10-135. Penalty. Any person violating any of the provisions of this act shall be liable to a penalty of not less than \$25 00 for the first offense and \$50 00 for any subsequent offense, which penalty shall be recovered in a civil action in the name of the department of health of the state of New Jersey or other body exercising the powers thereof, as the case may be. Such action may be maintained in any county district court or municipal court, and jurisdiction is conferred upon said court to hear and determine actions brought hereunder. The penalties, when recovered shall be paid to the state treasurer L. 1938, c. 195, p. 437, §32

24:10-136. Failure to pay penalty. The proceeding under the foregoing paragraph shall be summary in nature, and upon conviction, the penalty fixed by the foregoing section shall be imposed and judgment rendered therefor with costs. Upon the failure of any person so convicted, to pay such penalty and costs within 3 days, the judge, or magistrate of the court in which such conviction and judgment were found, shall commit such person to the common jail of the county where such conviction was had, for a period not exceeding 60 days unless the judgment for said penalty and costs shall be sooner paid L. 1938, c. 195, p. 437, §33

24:13-8. Summary procedure for recovery of penalties; process; judgment. Every county district court and every municipal court may, on oath or affirmation made according to law that a person has violated any provision of this chapter, issue process at the suit of the state department, or at the suit of the local board of the municipality in which the violation occurred, as plaintiff, for the recovery of penalties

24:13-9. Execution; imprisonment for nonpayment of penalty. The court, or magistrate shall, if judgment is rendered for the plaintiff, forthwith issue execution against the goods, chattels and person of the defendant, and may cause any defendant who may refuse or neglect to pay the amount of the judgment rendered against him, and all costs and charges incident thereto, unless an appeal is granted, to be committed to the county jail for any period not exceeding 90 days

24:13-13. Appeals. All appeals from any judgment given under the provisions of this chapter shall be to the county court

24:13-14. Costs. The costs in prosecutions for violations of this chapter shall be the same as costs in the district courts in actions on contract

24:14-10. Summary proceedings to recover penalties; jurisdiction. Every county district court and every municipal court shall issue process at the suit of the state department, as plaintiff, for the recovery of penalties imposed for the violation of any provision of this chapter

24:14-12. Imprisonment for nonpayment of penalty; execution against corporation. If any person convicted of violating this chapter shall fail forthwith to pay the penalty imposed together with the costs of the prosecution, the district court, municipal court or magistrate shall, except in the case of a corporation, cause the defendant to be committed to the county jail for a period not exceeding 90 days, or until the penalty and costs are paid

In case judgment is rendered against a corporate body, execution shall be issued against the goods and chattels of such corporate body

24:14-15. Appeals. All appeals from the judgment or sentence of the district court, municipal court or magistrate thereof by any party to any proceeding instituted under this chapter for the recovery of a penalty shall be to the county court

24:17-4. Injunction to restrain violation. The state department, either before or after the institution of a proceeding for the collection of a penalty imposed by this subtitle for a violation of any provision thereof, may bring an action in the superior court in the name of the state at the relation of the department for an injunction to restrain such violation and for such other or further relief as the court shall deem proper

The bringing of such an action or any proceedings therein shall not relieve any party to such proceeding from any penalty prescribed by this subtitle for such violation.

24:10-22.3. Jurisdiction of complaints. Any municipal court or any county court shall have jurisdiction to hear and determine any complaint for a violation of this act which may occur within the territorial limits of their jurisdiction and to assess the fines and levy the penalties described herein. L. 1945, c. 294, p. 846, §3.

24:11A-10. Violations; penalties; recovery. Any violation of this act, or of any rule or regulation of the department lawfully issued hereunder shall be punishable by a penalty of not less than \$25 00 nor more than \$100 00. All such penalties shall be sued for and recovered in an action at law by and in the name of the department or by and in the name of the local board of health of the municipality in which the violation occurred.

Any penalty recovered in any such action shall be paid to the plaintiff therein. When the plaintiff is the department, the penalty recovered shall be paid by the department into the state treasury. When the plaintiff is a local board of health, the penalty recovered shall be paid by the local board into the treasury of the municipality with-

in which the local board has jurisdiction L 1946, c 86, p 300, §10

24:11A-12. Injunctions. The department, either before or after the institution of a proceeding for the collection of a penalty imposed by this act for violation of any provision thereof, may institute an action in the superior court in the name of the state at the relation of the department, for an injunction to restrain such violation and for such other or further relief as the court shall deem proper. The bringing of such an action or any of the proceedings therein, shall not relieve any party to such proceeding from any penalty prescribed by this act for such violation L 1946, c 86, p 301, §12

PROPOSED REVISION

Title 26. HEALTH AND VITAL STATISTICS

26:1A-10. Violations; action for penalty; disposition of penalties. Each violation of any provision of the state sanitary code shall constitute a separate offense and each such violation shall be punishable by a penalty of not less than \$25 00 nor more than \$100 00. Each such penalty shall be sued for and recovered in a civil action at law, in any court of competent jurisdiction, by and in the name of the department of health of the state of New Jersey or by and in the name of the local board of health of the municipality in which the violation occurred.

Any penalty recovered in any such action shall be paid to the plaintiff therein. When the plaintiff is the department of health of the state of New Jersey, the penalty recovered shall be paid by the department to the state treasurer. When the plaintiff is a local board of health, the penalty recovered shall be paid by the local board into the treasury of the municipality within which the local board has jurisdiction.

Source P L 1947, c 177, p 797, §10

26:1A-27. Action by commissioner to prohibit nuisance. If no action for abatement, as provided in section 26 of this act shall be taken by the local board within the time specified in the notice, or if in the opinion of the commissioner the action of the local board shall not be such as the necessities of the case seem to him to require, the commissioner may institute a civil action in the superior court in the name of the state on the relation of the commissioner for an injunction to prohibit the continuance of the nuisance or source of foulness.

Source P L 1947, c 177, p 803, §27

26:1A-28. Nuisances originating outside territorial jurisdiction. Whenever any nuisance or foul odors injurious to the public health within

the territorial jurisdiction of a local board shall have a source of origin outside such territorial jurisdiction, the state commissioner of health may institute a civil action in the superior court in the name of the state, on the relation of the commissioner, for an injunction to prohibit the continuance of the nuisance or source of foulness or ill health.

Source P L 1947, c 177, p 803, §28

26:1A-30. Abatement of nuisance; costs. In every such civil action in which it shall be ascertained by the superior court that the nuisance or source of foulness or ill health existed at the time of the filing of the complaint, substantially as therein set forth, the court may abate the same by an injunction or otherwise, according to the practice of the court. The court may charge the costs of the action upon the property whereon the nuisance or source of foulness or ill health is found. Payment of the costs may be enforced by the sale of property or any part of it, by writ of execution, or the court may order the persons who caused the nuisance or source of foulness or ill health, or allowed the same to continue, to pay the costs.

Source P L 1947, c 177, p 804, §30

26:1A-31. Costs against commissioner. In case no such nuisance or source of foulness or ill health shall be found to exist, costs shall not be awarded against the commissioner unless it shall appear that no probable cause existed for instituting such action.

Source. P L 1947, c 177, p 804, §31

26:2-65. Water for drinking or other uses to meet standards fixed. Any water used or available for use for drinking or culinary purposes or for the cleansing of utensils used in preparing

or serving food or drink for public consumption, shall be of a quality safe for such use and shall meet standards of quality fixed by the commissioner of health of the state of New Jersey.

Source P L 1939, c 261, p 677, §1

26:2-73. Violations; penalty. Any person, corporation or their agents violating any of the provisions of this act, shall be liable to a penalty of not less than \$10 00 nor more than \$50 00, and for the second and each subsequent offense to a penalty of not less than \$25 00 nor more than \$100 00, to be recovered by and in the name of the department of health of the state of New Jersey or the local board of health

Source P L 1939, c 261, p 671, §1

26:2-74. Disposition of penalties recovered. Any penalty recovered in an action brought under the provisions of this subtitle shall be paid to the plaintiff therein. When the plaintiff is the department of health of the state of New Jersey the penalty shall be paid by the department into the treasury of the state. When the plaintiff is a local board of health, the penalty shall be paid by the local board into the treasury of the municipality within which the local board has jurisdiction

Source P L 1939, c 261, p 677, §1

26:2-75. Process. Every county district court or municipal court is empowered in an action brought by any person authorized by the commissioner of health of the state of New Jersey, or the local board of health, to issue process on the action of the department of health of the state of New Jersey, or the local board of health, as the case may be, as plaintiff, for the recovery of a penalty

26:3-20.1. Violations by local board in appointments; injunction. Whenever any local board shall violate any of the provisions of section 26 3-20 of this title, the department may institute a civil action in the superior court in the name of the state at the relation of the department for an injunction to restrain such violation and for such other or further relief as the court shall deem proper

Source P L 1947, c 181, p 828, §8

26:3-52. Actions against board for damages. No civil action shall be instituted in any of the courts of this state to recover damages against any local board, its officers or agents, because of a civil action instituted to remove and abate such nuisances and cause of disease, unless it shall be shown in the action that the alleged nuisance and cause of disease did not exist, or was not hazardous and prejudicial to the public health, and unless it be shown that the board acted without reasonable and probable cause to believe that such nuisance did exist and that such foul or noxious odors, gases, vapors or other cause was in fact prejudicial and hazardous to the public health.

Source R S 26 3-52

26:3-56. Abatement by action in the superior court. The local board, instead of proceeding in a summary way to abate a nuisance hazardous to the public health, may institute a civil action in the superior court, in the name of the state, on relation of the board, for an injunction to prohibit the continuance of such nuisance. Cases of emergency have precedence over other pending actions

Source R S 26 3-56

26:3-57. Injunction; costs; collection. In every such civil action in which it shall be ascertained by the superior court that the nuisance existed at the time of filing the complaint substantially as therein set forth, the court may abate the same by an injunction or otherwise, according to the practice of the court. The court may charge the costs of the action upon the property whereon the nuisance is found, and enforce the same by sale of the property, or any part of it, on writ of execution, or the court may order the person who caused the nuisance, or allowed it to continue, to pay the costs

Source R S 26 3-57

26:3-58. Liability of local board for costs. In case no such nuisance shall be found to exist, costs shall be awarded against the local board which caused the suit to be brought only in case it shall appear to the court that no probable cause existed for instituting the civil action

Source R S 26 3-58, L 1887, c 68, p 93, §30 [C S 2669, §30]

26:3-59. Search warrant proceedings. Any municipal court may issue a warrant to search for any nuisance affecting health. Such warrant may be issued only upon complaint, founded on information and belief, supported by oath or affirmation of any officer or agent of the department of health of the state of New Jersey, or of any local board of health that there is in any dwelling house, store, stable or any building of any kind whatsoever any nuisance affecting health or any person sick of any contagious or infectious disease, or any condition of contagion or infection which may have been caused by anyone recently sick of any such disease in any such dwelling house or other place. The warrant shall be directed to the sheriff of the county within which the complaint is made, or to any constable, marshal, police officer, or officer or agent of the local board having jurisdiction within the place where the search is to be made

Source R S 26 3-59

26:3-72. Jurisdiction of actions to recover penalties; process. Every county district court or municipal court may issue process at the suit of such local board for the recovery of a penalty

Source R S 26 3-72

26:3-77. Execution; imprisonment for nonpayment of penalty. The court, may, unless an appeal is taken cause a defendant who refuses or neglects to pay the amount of the judgment

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rendered against him and all costs and charges incident thereto to be committed to the county jail for a period not exceeding 90 days

Source R S 26 3-77

26:3-78. Additional penalty for second violation of same ordinance. In case a defendant shall have been twice convicted, within the space of 6 months, of the violation of the same health ordinance or code and due proof of such fact is made, the court may, in addition to the imposition of the penalty prescribed by section 26 3-70 of this title, cause the defendant to be imprisoned in the county jail or county workhouse, with or without hard labor, for any number of days not exceeding 1 for each dollar of the penalty.

Source R S 26 3-78

26:3-80. Offenses outside of territorial jurisdiction. No court shall have jurisdiction of any violations of a health ordinance or code of a local board which shall take place outside of the territorial jurisdiction of such court, as such territorial jurisdiction is now or may hereafter be established by law

Source R S 26 3-80

26:3-81. Costs. The costs in prosecutions for violations of an ordinance or code of a local board shall be the same as costs in county district courts, or before municipal courts, in other civil actions

Source R S 26 3-81

26:3B-11. Process in proceedings for violation. Every county district court or municipal court is empowered in an action by any person authorized by the department of health of the state of New Jersey or by the commissioner of health of New Jersey, or by the local board of health, or such board, body or officers exercising the functions of a local board of health according to law, to issue process at the suit of the department of health of the state of New Jersey or of the commissioner of health of New Jersey, or the local board of health, or such board, body or officers exercising the functions of a local board of health according to law, as the case may be, as plaintiff

Source P L 1945, c 192, p 655, §11

26:3B-12. Hearing; judgment; commitment; execution. The court shall cause a defendant, other than a body corporate, who refuses or neglects to pay forthwith the amount of a judgment rendered against him and the costs and charges incident thereto, to be committed to the county jail for a period not exceeding 10 days in the case of a first conviction, and in the case of a conviction for a second or subsequent violations for a period of not less than 10 days nor more than 30 days

Source P L 1945, c 192, p 656, §12

26:4-4. Notice to local board to control disease; procedure to compel action. Whenever within

the jurisdiction of a local board there is a person infected with any communicable disease, the state department may cause a notice in writing, signed by the commissioner of health, to be sent to the local board requiring it to take action for the restriction of the spread of the communicable disease within the time specified in the notice

If no action is taken by the local board within the time specified in the notice, the state department may apply to the superior court in a proceeding in lieu of prerogative writ to compel the local board to take the action ordered in the notice

Source R S 26 4-4

26:4-37. Quarantine procedure. In establishing quarantine for venereal disease, the licensed health officer or the state commissioner of health, or the authorized representative of either shall by notice in writing define the restriction of the actions, behavior and movements of the person or the place and the limits of the area within which the person is to be quarantined. Such person while so quarantined shall observe and obey said notice restricting his actions, behavior and movements or remain within the place and area defined by said health officer, director or representative in said notice. The custodian, if any, of such person shall safely keep and confine said person and said notice shall be sufficient warrant and authorization therefor

Whenever a licensed health officer or the state commissioner of health or the authorized representative of either shall quarantine any person for venereal disease under authority of this article, he may also order the removal of such person to the place and area within which the person is to be quarantined for venereal disease, and the person shall proceed to such place at the time and in the manner specified

A licensed health officer or the state commissioner of health or the authorized representative of either one of them may file a complaint with any county district court or municipal court, or the county court against the following persons

a Any person, who while quarantined for venereal disease fails, refuses or neglects to observe and obey said notice restricting his actions, behavior and movements, or to remain within the place and area defined by said health officer, commissioner or representative or to proceed to a place for quarantine for venereal disease at the time and in the manner specified by said health officer, commissioner or representative,

b Any person who fails, refuses or neglects to submit to, observe or obey the conditions of any commitment or to comply with any order made by any county district court, criminal judicial district court or the county court under authority of this article;

c Any of the persons included in section 26 4-36 of this article.

The complaint shall be verified by affidavit setting forth the section violated and the reasons for filing said complaint

Upon filing the said complaint either a summons shall issue commanding the person to appear before the court, at a specified time or a warrant shall issue, returnable forthwith, directed to the sheriff or any constable in the county, or any police officer, commanding him to bring the person named in the complaint before said court

Upon the return of the summons or warrant the court shall proceed to hear and determine the matter in a summary way and without a jury. If the court finds that the person is one of those listed in this section against whom a complaint may be filed, he may commit such person to a state, county, or municipal hospital which will receive the person, or to any other place or institution suitable for and willing to receive the person for detention, examination, care and treatment, whether the hospital, place or institution be located within or without the county, or to the county jail or may make any order for the examination, care or treatment of said person which may be deemed proper under the circumstances

The complaint, commitment, and all other papers relating to the case shall be impounded and shall not be open to public inspection, and hearings shall not be open to the public

Any person committed under the provisions of this statute shall be held in the place to which committed until discharged by the court who heard the case or by the judge of the county court, from which the person is committed or by a judge of the superior court, or by order of the commissioner of the state department of health

The local health officer having jurisdiction shall report to the department of health of the state of New Jersey any person quarantined for venereal disease, or upon whom a summons is served or against whom a warrant is issued under authority of this article except where the action is instituted by the state commissioner of health or his authorized representative

Source R S 26 4-37, as am P L 1945, c 104, p 450, §4

26:4-49. Additional penalty for second offense. In case a defendant shall have been twice convicted, within the space of 6 months, of the violation of the same provision of this article and due proof of such fact is made, the county district court, criminal judicial district court or municipal court may, in addition to the imposition of the penalty prescribed by section 26 4-129 of this title, cause the defendant to be imprisoned, with or without hard labor, for any number of days not exceeding 1 for each dollar of the penalty

Source R S 26 4-49

26:4-49.7. Examination and treatment for venereal disease of person charged with offense. When it appears to any county district court, criminal judicial district court, any municipal court or the county court, from the evidence or otherwise, that any person coming before such court on any charge, may have a venereal disease

in an infectious stage, it shall be the duty of such court to order the person to submit to a medical examination for venereal diseases, in a jail or at a hospital or clinic or by such physician as may be selected or appointed for the purpose, and if found to have a venereal disease in an infectious stage to submit to treatment in such jail, hospital or clinic or by such officer or to other treatment permitted under the medical practice act

Source P L 1945, c 101, p 444, §1

26:4-51. Application to court for compulsory examination. Whenever any person shall refuse to submit to an examination, or to furnish such specimens, the director or the local board may apply to the county court, any county district court or municipal court for an order requiring that he shall submit to examination and furnish the required specimens. The application shall be by complaint duly verified setting forth the particular infective agent with which the person is suspected to be infected, and the reasons why the examination is desired

Source R S 26 4-51

26:4-52. Complaint. If it shall be found that any person is the carrier of the infective agent of any such disease, and that he is unable or unwilling to conduct himself in such a manner as not to expose the public to danger of infection, the state department or local board shall lodge a complaint against the person with a judge of the county court, any county district court or municipal court

Source R S 26 4-52

26:4-53. Warrant, trial, and commitment. Upon presentation of the complaint, the judge or magistrate may sign, and the clerk of the court shall seal a warrant directed to the sheriff or a constable in the county, commanding him to bring the person named in the complaint before the judge or magistrate. Upon the return of the warrant, the judge or magistrate shall proceed to hear testimony and give judgment. If the judge or magistrate finds that the person is the carrier of such infective agent, and that he neglects or is unable so to conduct himself as not to expose the public to infection, he may commit the person to a county or municipal hospital or to any other suitable place or institution for the care of persons suffering from such disease. The judge or magistrate may also make any order for the care or treatment of the person which may be proper

Source R S 26 4-53

26:4-56. Discharge of person committed. Any person so committed shall be held in the place to which committed until discharged by a judge or magistrate of the court or by a judge of the superior court

Source R S 26 4-56

26:4-57. Violations of order of judge; penalty. Any person who shall disobey any order of a judge or magistrate of the court made pursuant

to this article shall be liable to a penalty of not more than \$100 00

Source R S 26 4-57

26:4-122. Expenses, fees, and costs; lien on vessel. The port health officer or local board to whom any moneys shall be due on account of any expense or fees shall have a lien for the amount of the expenses or fees, and for all costs of the civil action upon the vessel, its tackle, apparel and furniture.

Source R S 26 4-122

26:4-123. Enforcement of lien. If payment is not made on demand the lien may be enforced by an action in admiralty, or other proper civil action, in any court of competent jurisdiction

Source R S 26 4-123

26:4-130. Procedure for recovery of penalties. Except as otherwise specifically provided in this chapter, any penalty incurred for a violation of any of the provisions of this chapter shall be sued for and recovered by the department of health of the state of New Jersey or by the local board of the municipality within which the violation occurred

Every county district court or municipal court is empowered to issue process at the suit of the department of health of the state of New Jersey, or the local board, as the case may be, as plaintiff

Said court may cause any defendant who shall fail to pay forthwith the amount of the judgment rendered against him, and all costs and charges incident thereto, to be committed to the county jail for any period not exceeding 90 days

No district court or municipal court shall have jurisdiction of any violation of this chapter which shall take place outside of the territorial jurisdiction of such court, as such territorial jurisdiction is now or may hereafter be established

Source R S 26 4-130

26:6-5. Cemeteries dangerous to public health; relief in superior court; costs. When a cemetery or burial ground or part thereof for any reason has become dangerous to the public health and it shall be deemed inadvisable that any further interments be made therein, any municipal authority within whose limits the cemetery or burial ground is situate, or the department of health of the state of New Jersey or any local board, may institute a civil action in the superior court, either in the name of the state on the relation of the plaintiff or otherwise, demanding relief in the premises

If the court shall determine that the cemetery or burial ground or any part thereof is dangerous to the public health for any reason, or that further interments therein would be inadvisable, the court, may, by injunction or otherwise, grant such relief as may be proper and necessary for the protection of the public health

If the court shall determine that the plaintiff is not entitled to any relief, costs shall not be awarded against the plaintiff unless it appears to

the court that no probable cause existed for instituting the action

Source R S 26 6-5

26:6-21. Emergency burial or removal permit. If through the absence of the local registrar, or for other sufficient reason, it is impossible to obtain from the registrar a burial or removal permit in time for burial or removal, a judge of the county court, or magistrate of a municipal court of the county in which the death occurred, if he is satisfied that the death certificate is genuine, and that no permit can be obtained in time for burial or removal, shall issue an emergency burial or removal permit.

Source R S 26 6-21

26:6-22. Form of emergency permit. The emergency burial or removal permit shall be issued in the following form

"It being impossible to obtain a burial or removal permit from the registrar of vital statistics on account of (state here the reason), I, a judge of the county court (or judge of criminal judicial district court or magistrate of municipal court) of the county of, do hereby grant this emergency permit for the burial or removal of, whose death has been duly certified to me"

The permit shall be dated and signed by the judge or magistrate and shall be given to the person delivering the certificate of death The judge or magistrate shall, within 5 days thereafter, transmit the certificate to the state department The judge or magistrate shall be entitled to 50 cents for the issuance of an emergency permit.

Source R S 26 6-22

26:8-38. Recording unrecorded births; penalty for false certificate. The birth of any child which has occurred or which may hereafter occur and which is not recorded in the bureau of vital statistics, as required by this chapter, may be recorded in the bureau by filing in the bureau a certificate

a Over the signature of the physician or midwife who attended the birth or over the signature of the father or mother of the child, or

b When it is impossible to secure the signature of any of the persons named, the certificate may be signed by any person who has definite knowledge of the facts concerning the birth or by the person whose birth is being reported, provided, substantiating documentary proof is submitted and noted upon the certificate by the person before whom the affidavit is taken

In every case the certificate shall be accompanied by an affidavit attesting the correctness of the information given therein, which affidavit shall be a part of the record of the birth A copy of the affidavit shall accompany each certified copy of any record of the birth issued by the state registrar or any local registrar

The affidavit (1) if taken in New Jersey, shall be taken before a superior court judge, county

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or district court judge, the state registrar or assistant state registrar of vital statistics, a county clerk or a deputy county clerk of the county where the birth occurred or where the person making the affidavit resides or, (2) if taken in some other state of the United States or territory thereof or in the District of Columbia shall be taken before a judge of any of the United States courts or a judge of any court of record having jurisdiction in the place where the affidavit is taken, or, (3) if taken in any foreign kingdom, state, nation or colony shall be taken before a public ambassador, minister, consul, vice consul, consular agent, charge d'affaires or other representative of the United States for the time being, to or at any such foreign kingdom, state, nation or colony, provided, however, that the affidavit may be taken in New Jersey by any secretary or sergeant at arms of any superior court judge, or of any judge of the county court, or by the clerk or deputy clerk of a county district court of the county where the birth occurred or where the person making the affidavit resides, if prior thereto, the superior court judge, the county judge or the district court judge shall have filed with the state registrar of vital statistics a certificate setting forth that such secretary, sergeant at arms, clerk, or deputy clerk, as the case may be, has been designated by him to take such affidavits, and all oaths, affirmations and affidavits required to be made or taken by this section or necessary or proper to be made or taken by this section may be made and taken before any such secretary, sergeant at arms, clerk, or deputy clerk, when so designated.

The bureau or any local registrar may require proof of the correctness of the information in a certificate and may refuse to accept a certificate which appears to contain false or insufficient information.

Any person knowingly submitting a certificate pursuant to this section containing incorrect particulars regarding a birth shall be subject to a penalty of not more than \$500 00 to be recovered with costs in a summary proceeding in the name of the state department

Source R S 26 8-38, as am P L 1941, c 63, p 149, §1, P L 1942, c 21, p 48, §1, P L 1946, c 26, p 66, §1

26:8-40.3. Complaint for order fixing time and place of birth. In any such case application for an order fixing the time and place of birth in this state of any such person shall be made by such person or by someone on such person's behalf under the name by which such person is then known, by complaint, duly verified and filed in the county court of the county in which such person was found or in which such person then resides, which complaint shall set forth that such person was found in this state as a child of unknown parentage, and that his parentage and the place and time of his birth are unknown, and shall set forth the place where, the time

when and the circumstances under which such person was found, his probable age at said time, the probable date of his birth and the place or places where such person has resided since he was found and now resides and that such person has not been guilty of any of the acts described in section 4 of this act

Source P L 1942, c 95, p 347, §2

26:8-40.4. Hearing and notice thereof; order.

Upon the filing of said complaint the court or a judge thereof shall fix a time and place for hearing thereon and if said person is of the supposed age of 12 years or over shall give not less than 20 days' notice of the time and place fixed for such hearing to the United States district attorney for the district of New Jersey, and at said time or at any time to which said hearing may be adjourned, said court or judge, having examined into the merits of such complaint and heard testimony thereon and being satisfied of the truth of the allegations of said complaint and that such person has not been guilty of any of the acts set forth in section 4 of this act, shall, by its order, determine the probable date of the birth of said person and the place of his birth as the place where he was found in this state and shall make its judgment accordingly and after the making of said judgment, said person shall be presumed to have been born in this state at the time and at the place set forth in said judgment until said person shall be shown not to have been born in this state

Source P L 1942, c 95, p 348, §3

26:10-13. Violations; penalty; recovery. Any person violating any of the provisions of this article shall be liable to a penalty of not more than \$100 00 for each offense

All suits for the recovery of any such penalty shall be triable before any county district court of the county in which the violation occurs

Source R S 26 10-13

26:11-25. Abatement by action in superior court. The county board may, in its proper name, institute a civil action in the superior court or other proceeding for the abatement of any public or private nuisance within the jurisdiction of the board, where it is made to appear by the pleadings and proof that the nuisance is such that any resident living in the neighborhood thereof and affected thereby could have instituted a like proceeding

In case the action is dismissed costs shall not be awarded against the county board unless it appears to the court that no probable cause existed for instituting the action

Source R S 26 11-25

26:11-30. Jurisdiction of proceedings to recover penalties; process. Every county district court or municipal court is empowered to issue process on the action of the county board as plaintiff for the recovery of a penalty.

Source R S 26 11-30

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26:11-34. Execution; imprisonment for non-payment of penalty. Such court may, unless an appeal is taken, cause any defendant who refuses or neglects to pay the amount of the judgment rendered against him and all costs and charges incident thereto, to be committed to the county jail for any period not exceeding 90 days.
Source R S 26 11-34

26:11-35. Additional penalty for second violation of same ordinance. In case a defendant shall have been twice convicted within the space of 6 months of a violation of the same ordinance or code, and due proof of such fact is made, the

court may, in addition to the payment of the appropriate penalty, cause the defendant to be imprisoned in the county jail or county workhouse, with or without hard labor, for any number of days not exceeding 1 day for each dollar of penalty.

Source R S 26 11-35

26:11-36. Arrest without warrant. All police officers, constables and health inspectors may arrest without warrant any person violating in their presence any ordinance or code of a county board

Source 26 11-36

PROPOSED REVISION

Title 27. HIGHWAYS

27:7-44.1. Consents, grants and franchises affecting highways; approval of commissioner; removal of encroachments; penalty for violation. No consent, grant or franchise affecting any portion of a state highway, or of any road included in the state highway system, shall be given for the construction of a railroad or street railway thereon except upon approval of and under conditions acceptable to the commissioner, nor shall any person enter upon or construct any works in or upon any state highway, except under such conditions and regulations as the commissioner may prescribe. Whenever any encroachment may exist without warrant of law in any road when taken over as a state highway, the commissioner shall notify the attorney general, who shall proceed to cause the same to be removed as by law provided.

Any person guilty of any violation of this section shall be liable to a fine not exceeding \$100 for each such day's violation, and the costs of prosecution, to be recovered by an action at law in the name of the state before any court of competent jurisdiction by the commissioner. Said fines shall be paid into the state treasury to the credit of the funds available for construction, maintenance and repair of roads.

Any such violation may be removed from any state highway as a trespass by a complaint filed by the commissioner in the superior court.
Source R S 27 44-1

27:16-43. Commissioners; application for appointment; order; publication. The board shall, by a complaint in writing signed by its director and clerk, apply to a judge of the superior court for the appointment of 3 commissioners. Upon the presentation of the complaint the judge shall make an order fixing a time and place when and where the commissioners will be appointed, which time shall be not less than 15 days from the making of the application. The order shall be

published in at least 1 newspaper published and circulating in the county, and in such other manner as the judge may direct.

Source R S 27 16-43

27:16-44. Commissioners; appointment; notice. At the time and place so fixed, upon satisfactory proof of the publication of the order as provided in section 27 16-43 of this title, the judge shall appoint, under his hand, 2 discreet and impartial freeholders, residents in the county, as commissioners to examine and appraise the real estate, or interest therein, to be taken for the purposes of this chapter as set forth in the complaint, and the damage sustained by the owners thereof, by reason of the taking.

Notice shall be given to the persons interested as shall be directed by the judge making the appointment, either personally or by publication, or otherwise.

Source R S 27 16-44

27:16-45. Commissioners; oaths; filing. Each commissioner shall, before entering upon the performance of his duties, take and subscribe an oath that he will faithfully and impartially perform the duties imposed upon him. The commissioners' oaths shall be filed in the superior clerk's office.

Source 27 16-45

27:16-47. Commissioners' report; filing. The commissioners or any 2 of them, shall, within 3 months from the date of their appointment, make a written report containing a description of each separate tract of real estate taken, which they shall file within 10 days after the signing thereof, in the office of the superior court clerk, to remain on record therein, together with their appointments and proofs of notice hereinbefore required.

Source R S 27 16-47

27:16-48. Report as evidence; right of entry before making compensation; petition. The re-

port of the commissioners, or a copy thereof certified by the superior court clerk, and proof of payment or tender of the amount awarded, shall be evidence of the right of the board of chosen freeholders to have, hold, use, occupy, possess and enjoy the real estate or interest therein, for the purposes of the improvement

The board of chosen freeholders may, however, enter upon and take property for any of the purposes set forth in section 27 16-1 of this title, in advance of making compensation therefor, in any case where it cannot acquire the property by agreement with the owner. In such cases the board, upon exercising such right and entering upon and taking the property in advance of making compensation therefor, shall present a complaint and proceedings shall be had to fix the compensation to be paid to the owner as provided in sections 27 16-43 to 27 16-53 of this title

Source R S 27 16-48

27:16-49. Allowances for services; fees and expenses; payment. The judge of the superior court shall, upon application by any party, and upon reasonable notice to the other, tax and allow such costs, fees and expenses to the commissioners, superior court clerk and others performing any of the duties prescribed herein as he shall deem equitable and right, which shall be paid by the county treasurer upon certificate of the judge

Source R S 27 16-49

27:16-51. Appeal from commissioners' report; struck jury; procedure. Should the board of chosen freeholders or the owner of any real estate feel aggrieved by the decision of the commissioners as set forth in their report, they may appeal to the superior court, law division, at any time within 30 days after the filing of the report by the commissioners. Every appeal shall be made in writing in the form of a complaint to the court, and shall be filed with the clerk thereof. The filing of the complaint shall vest in the superior court full power to hear and adjudge the matter, and to direct a proper issue for the trial of the controversy to be formed between the parties, and to order a jury to be struck and a view of the premises to be had. The issue may be tried in the same manner as other actions in that court

Source R S 27 16-51

27:16-52. Judgment on appeal. If the jury shall find a greater sum than the commissioners shall have awarded in favor of the owner, judgment thereon, with costs, shall be entered against the county. If the jury shall find a less sum than the commissioners shall have awarded, judgment may be entered for such lesser sum, but the costs shall be paid by the appellant, and either deducted from the sum found by the jury, or execution may be awarded therefor, as the court shall direct

27:16-53. Payment of award into superior court. If a party entitled to the payment of an amount so awarded refuses to receive it, or is out of the state, or under a legal disability, or the real estate is encumbered by a judgment, mortgage or other lien, the amount awarded shall be paid into the superior court, chancery division, and shall there be distributed according to law. Payment into court shall be a valid and legal payment

Source R S 27 16-53

27:16-65. Award; payment into court; appeal; struck jury. If an uncertainty exists as to who is entitled to the amount awarded, or if the board of chosen freeholders is unable to tender the award by reason of the incapacity or absence of any person entitled thereto, or if there exists an unsatisfied lien upon the property to be taken, or any person refuses to receive the award, or an appeal from the award is taken, it may be paid into the superior court, chancery division, and shall be distributed to the person entitled thereto according to law. Payment into the superior court, chancery division, shall operate to stop the running of interest upon an award thereafter made to the amount of the deposit

The owner or owners or the board of chosen freeholders of the county, feeling aggrieved by an award for any real estate taken for any such improvement, may appeal to the superior court, law division, at any time within 60 days after the filing of the report in the office of the superior court clerk or register of deeds, as the case may be, and the court shall thereupon order a trial by a struck jury to award such damages anew. The trial shall be conducted as any other case of trial by jury in condemnation appeal actions, upon an issue to be framed under the direction of, or by the court. The completion of the improvement shall not be delayed thereby and the county may proceed with the improvement as though the appeal had not been taken

Source 27 16-65

27:16-66. Title vests upon payment of award; right of entry. Upon the acceptance of the award, or the payment thereof into the superior court, chancery division, title to the real estate or right or interest therein shall vest in the county, and the board of chosen freeholders may thereupon enter upon and take possession of the real estate or right or interest therein and remove all persons therefrom

Source R S 27 16-66

27:16-67. Report as evidence of county's right to possession. The report of the commission or a copy thereof certified by the clerk or register of deeds, as the case may be, and proof of tender of the amount awarded, or payment thereof to the owner or the superior court, chancery division, as the case may be, shall at all times be evidence of the right of the board of chosen freeholders to have, hold, use, occupy, possess

and enjoy the real estate or interest therein for road or highway purposes
Source R S 27 16-67

27:20-3. Repair of bridges; participation by street railway company; agreement; petition. If any such bridge is used by a street railway company the company may undertake a part of the expense of its building, rebuilding and repair, and the board or boards of chosen freeholders and the company may enter into an agreement whereby the share of the expense to be borne by the company may be ascertained and settled

If no agreement can be reached the boards of chosen freeholders or the company may apply by complaint to the superior court which may hear the parties in a summary way on such notice as it may prescribe, and apportion and determine the portion of the expense to be paid by the company
Source 27 20-3

27:20-4. Maintenance and operation of jointly-acquired plank roads; agreement; petition. When the road and bridge or bridges of a plank road company, included within the terms of sections 27 20-1 to 27 20-3 of this title constitute a continuous highway in 2 or more counties the boards of chosen freeholders shall acquire, maintain and operate such road and bridge or bridges at joint expense, and may, by agreement, divide the expense thereof between the counties in such proportion as they may deem just, notwithstanding the share of such expense agreed to be borne by either county may be more or less than the cost of acquiring, maintaining and operating the portion of the road or bridges located within the limits of the county

If no agreement can be reached the boards of chosen freeholders or either of them may apply

by complaint to the superior court which may hear the parties in a summary way on such notice as it may prescribe, and apportion and determine the portion of the expense to be paid by each of the counties respectively
Source 27 20-4

27:20-6. Changed conditions to alter apportionment; complaint. At any time after the entry of a judgment of apportionment of expense as provided in sections 27 20-4 and 27 20-5 of this title, and upon the filing of a complaint of the boards of chosen freeholders or either of them, alleging changes in the conditions upon which the original judgment of apportionment had been based, the superior court may hear the parties in a summary way on such notice as it may prescribe, and apportion and determine the portion of the expense to be thereafter paid by each of the counties respectively
Source R S 27 20-6

27:21-3. Apportionment of cost; agreement; application to court if no agreement. The cost of construction of a bridge or the widening of an existing bridge shall be borne by the board of chosen freeholders of the county, the canal corporation, its successors or assigns, over whose canal the bridge is constructed or widened, and the municipality in which the street or highway is located, in the amount or proportion agreed upon between them If no agreement can be reached the board of chosen freeholders may apply by complaint to the superior court, which may hear the parties in a summary way on such notice as it may prescribe, and may apportion and determine the portion of the expense to be paid by each of the parties
Source R S 27 2-3

PROPOSED REVISION

Title 29. HOTELS

29:1-42. Penalty for violations; actions; review. Any person who shall violate or any person who shall be responsible for a violation of any provisions of this act shall be subject to a penalty of \$100 00 for each and every violation Any action for a penalty under this act may be brought in any court of competent jurisdiction in the county in which the violation occurred In addition to other remedies, the authority herein designated may institute any appropriate action to compel compliance with this act or to prevent, enjoin or restrain the use of any premises, located within the municipality, where the construction, maintenance or use of such premises is a violation of any provision of this act.

Any refusal to issue a certificate of approval

and registration or any notice to conform or action in the enforcement of this act may be reviewed in a summary manner by any judge of the superior court upon complaint and upon such notice as the court or a judge thereof shall prescribe, and upon any such review the court may affirm, reverse, modify or make such order as shall be appropriate
Source P L 1948, c 340, p 1342, §35

29:3-12. Revocation of registration by county court. A person aggrieved by the registration of an hotel name or designation by another person may bring a civil action in the county court against such other person, and the court may direct the revocation of such registration,

if it be determined that such other person has not the right to the use of such name or designation because of the prior use thereof by another.

Source R S 29 3-12

29:3-19. Jurisdiction of action for penalty. Actions for penalties for violations of this chapter may be brought in a county district court, or municipal court, all of which courts are given jurisdiction to hear and determine such actions

Source. 29 3-19

PROPOSED REVISION

Title 30. INSTITUTIONS AND AGENCIES

30:1-16. Order of court to remedy improper conditions. If it shall appear after any such investigation of any of the institutions or noninstitutional agencies enumerated in sections 30 1-14 and 30 1-15 of this title, except institutions conducted by properly organized and accredited churches and fraternal societies organized for aid and relief of their members, that the laws relating to the construction, management and affairs of any such institution, and the care, treatment, government and discipline of its inmates or patients are being violated, or that the inmates or patients in any such institution are cruelly, negligently or improperly treated or inadequate provision is made for their sustenance, clothing, care, supervision or other condition necessary to their suitable and proper well being, the state board may apply for an order of any judge of the superior court or a judge of the county court of the county in which such institution is located, directed to the proper superintendent, commissioner, agent, medical director, warden, manager, keeper, chief executive officer or other officer of such institution or in control thereof, or responsible for such violation or omission, requiring him to modify any treatment or to apply such remedy, or both, or carry out the requirements of the state board or the commissioner as shall therein be specified. The application for such order shall be made as prescribed in section 30 1-17 of this title, and the judge may thereupon make such order as may be just and effectual. A failure to comply with the terms of such order shall be a contempt of court and punishable as such

Source R S 30 1-16

30:1-17. Application for enforcement orders; orders; contempt; duties of attorney general and prosecutors of pleas. The rights and powers conferred upon the state board and the commissioner by sections 30 1-14, 30 1-15 and 30 1-16 of this title, so far as they relate to the investigation of the institutions and noninstitutional agencies enumerated therein, may be enforced by an order of any judge of the superior court or of a judge of the county court of the county in which such institution is situated, and filed with the clerk of the county, and heard by such judge, in a sum-

mary manner, after at least 20 days' notice to the officer or board having charge of such institution, of the time and place of making such application. A copy of all the papers upon which the application is based shall be served with the notice of such application. Upon such hearing the court may make such orders as may be just and effectual, and the failure to comply with the terms thereof shall be contempt of court and punishable as such.

If, in the opinion of the state board, any matter with regard to the management or affairs of any such institution or any inmate or person in any way connected either with required legal investigation or action of any kind, notice thereof may be given by the state board, or to the prosecutor of the pleas of the county, and he shall thereupon make inquiry and take such proceedings in the premises as he may deem necessary and proper. It shall be the duty of the prosecutor of the pleas when so required, and the attorney general, when requested in writing by the judge of the superior court, to furnish such legal assistance, counsel or advice as the commissioner or the state board may require in the discharge of his or its duties.

Source R S 30 1-17

30:1-18. Jurisdiction of superior court over insane not affected. No provision of this title shall restrain or abridge the power and authority of the superior court over the persons and property of the insane

Source R S 30 1-18

30:4-23. Definitions. As used in this article: "Chief executive officer" means the chief executive and administrative officer of any institution as designated for that purpose by the board of managers.

"County counsel" includes the chief legal officer or adviser of the board of chosen freeholders of any county in this state or his duly authorized representative.

"Institution", "institution for the insane", "institution for the care and treatment of the insane" include, except as herein otherwise provided, any state or county institution for the care and treatment of the insane, the epileptic, the tuber-

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culous, feeble-minded or the idiotic in this state, as the case may be

"Judicial officer" includes any judge of the superior court or the county court of any county in this state, and also the judge of the juvenile court of or in any county

"Medical director" means the chief medical officer in charge of the medical service in any charitable institution included within the provisions of this title

"Patient" includes any person or persons alleged to be insane, epileptic, tuberculous, feeble-minded or idiotic whose admission to any institution for the care and treatment of such class of persons in this state has been applied for

Source R S 30 4-23

30:4-26.1. Places for temporary confinement of lunatics pending determination of insanity and legal settlement; arrest; summary hearing. The board of freeholders of every county in this state shall provide some safe and convenient place or places in which lunatics or persons of unsound mind who may be considered dangerous to the public may be temporarily confined until proper inquiry can be made touching their insanity or unsoundness of mind and legal settlement as now provided by law, and shall make provision for the proper care and maintenance of such person so confined until their lunacy and places of legal settlement shall be determined. Where any city of the first class in any such county maintains and operates a municipal hospital containing facilities for custody and care of persons of unsound mind and the proper city authorities consent thereto, the board of freeholders of such county may designate such municipal hospital as a place for the temporary confinement of such lunatics or persons of unsound mind if they are at the time resident in such city. Such temporary confinement shall not exceed the period of 10 days unless the same shall be extended as hereinafter provided. In case no order shall be made for the removal of such lunatic to a lunatic asylum within such period of 10 days, such lunatic shall be discharged from such temporary confinement unless the county court or a judge thereof shall, by order, extend such period of confinement. The county court or a judge thereof shall also have power, as in their judgment they may deem proper, by written order, to transfer any such lunatic or person of unsound mind from one place of confinement to another place of confinement so designated

All lunatics so temporarily confined shall be under the custody, control and direction of such officer as shall be designated for that purpose by the board of chosen freeholders of the several counties, except that where any such lunatic shall be thus temporarily confined in any municipal hospital as herein authorized, such lunatic shall be under the custody, control and direction

of the medical director or other head officer of such institution

The constables and police officers in the several townships, cities and other municipalities shall be authorized to apprehend any lunatic or person of unsound mind, who shall on inspection be deemed to be dangerous to the public, and they shall immediately take such person or persons so apprehended before the nearest municipal court or magistrate thereof who shall in a summary way inquire and determine whether such person or persons is or are of unsound mind and dangerous to the public, and if so found, the said municipal court or magistrate thereof shall forthwith commit such person or persons to the custody of the person in charge of such place of temporary confinement, until discharged or removed therefrom as herein provided. As amended L 1941, c 353, p 924, §1.

30:4-34. County adjuster; duties; preparation of committal papers; civil service. In each county where county counsel, county solicitor, county clerk, county physician or county probation officer, or any of their assistants is in charge and supervision of the preparation of papers relating to the commitment of the insane, such person shall be known as "county adjuster" and such duties shall continue to pertain to the office of such county counsel, county solicitor, county clerk, county physician or county probation officer or their successors in office. In all other counties the judge of the county court, with the consent of the board of chosen freeholders shall designate some county official or employee as county adjuster

The county adjuster shall have charge and supervision of the preparation of papers relating to the commitment of the insane in such county, and in cases arising in other counties in which the legal settlement appears to be in his county. Classification under civil service rules shall not be affected by reason of such designation or additional duties, and additional compensation, if any, for such services may be fixed by the board of chosen freeholders and paid in the same manner as other county employees are paid. Each board of chosen freeholders shall notify the various institutions for the insane, of the name and address of the county adjuster

Source L 1918, c 147, p 375, §408, as am L 1919, c 97, p 230, §16 [1924 Suppl §34-159]

30:4-37. Class "B"; detention; commitment. The class designated "B" shall include all cases where the condition of the patient, in the judgment of the certifying physicians, is such that he should be placed under immediate restraint in an institution, and where an order of temporary commitment can be obtained prior to his admission into such institution. In all such cases a statement of such condition of the patient must appear in the certificates of the physicians certifying to the insanity of the patient. The

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person making the application shall, before the patient is admitted to the institution, obtain an order of temporary commitment, instituting the inquiry, from a judge of any court of record in the county in which such person resides or may be. Such order instituting an inquiry as to the sanity of the patient shall direct that proof shall be taken at the inquiry as to the mental condition of the patient and shall be attached to the application and the certificate. The order of temporary commitment, application and certificate shall be filed with the chief executive officer of the institution before or at the time of the admission of the patient to such institution and shall be the warrant and authority for the admission and detention of the patient for a temporary period not exceeding 20 days from the date thereof. It shall be the duty of the chief executive officer forthwith after such application, certificates and order of temporary commitment shall have been received by him, to mail certified copies thereof under his hand and the seal of the institution to the county adjuster of the county from which the commitment of such patient is requested. It shall thereupon be the duty of the county adjuster to present forthwith such certified copies to a judge of the county court or the juvenile and domestic relations court in such county and to request the fixing of a time and place certain for the final hearing.

Source L 1918, c 147, p 377, §411, as am L 1919, c 97, p 231, §17 [1924 Suppl §34-162]

30:4-38. Class "C"; detention, commitment. The class designated "C" shall include all cases where the condition of the patient, in the judgment of the certifying physicians, is such that the patient should be placed under immediate restraint and confinement in an institution, and where it is impossible to obtain an order of temporary commitment from a judge of a court of record, in the county in which the patient resides or may be. A statement of such condition of the patient must appear in the certificates of the physicians and the application shall contain a statement of the applicant's inability to secure an order of temporary commitment. The person making the application shall, on or before the admission of the patient to the institution, present the application and certificates to the chief executive officer of the institution, and such papers shall be the warrant and justification for the temporary detention of the patient at such institution. The chief executive officer shall thereupon make or cause to be made a copy of the papers so filed and shall certify them under his hand and the seal of the institution and forthwith mail such certified copies to the county adjuster of the county from which the patient shall have been admitted. It shall be the duty of the county adjuster upon receipt of the papers from the chief executive officer, to present the same to a judge of the county court or the juvenile and

domestic relations court in such county and obtain an order of temporary commitment, which order shall approve the admission of the patient to the institution, and shall be the warrant and authority for the detention of the patient for a temporary period not exceeding twenty days from the date of his admission and it shall be the duty of the county adjuster to forward the order to the chief executive officer of the institution.

Source R S 30 4-38

30:4-40. Notice of final hearing. In all cases where the patient is not confined in an institution before the final hearing, the applicant shall cause to be served personally upon the patient or his attorney written notice of the time and place of final hearing, at least 1 day before the date fixed. The notice shall contain a statement that if the patient desires to oppose the application for a final order of commitment he may appear personally or by attorney at the time and place fixed for final hearing. Proof of such service shall be made at the final hearing, and at such final hearing the applicant shall, if required by the judicial officer, produce the patient.

Source L 1918, c 147, p 380, §414 [1924 Suppl §34-165]

30:4-41. Notice of final hearing served on patient; patient's rights; notice of final hearing served on applicant. In all cases where the patient is confined in an institution before the final hearing, the county adjuster shall serve or cause to be served personally upon the patient a written notice of the time and place of final hearing, at least 1 day before the date fixed. The notice shall contain a statement that if the patient desires to oppose the application for a final order of commitment, he may appear personally or by attorney at the time and place fixed for final hearing. Proof of service shall be made at the final hearing. The chief executive officer shall afford the patient every opportunity to appear personally or by attorney at the hearing, and assist him in communicating with his friends, relatives or attorney. If the chief executive officer of any institution for the insane shall certify that in his opinion it would be prejudicial to the health of the patient, or unsafe to produce the patient at the inquiry, then such patient shall not be required to be produced. Two days' notice of the time and place of the final hearing shall in all cases be mailed to or served upon the applicant, but in case the applicant is not the husband, wife or nearest relative, the notice shall be mailed to or served upon the husband, wife or nearest relative if possible. Proof of service shall be made at the final hearing.

Source L 1918, c 147, p 380, §415, as am L 1919, c 97, p 234, §20 [1924 Suppl §34-166]

30:4-42. Records produced at final hearing; witnesses; continuance; expenses; reference. On the day fixed for the final hearing the applicant

shall bring the matter before the court and shall produce in all cases coming under class "A" the original application and certificates and any other papers pertinent to the inquiry, and in all cases coming under class "B" and class "C" the county adjuster shall produce certified copies of the application, certificates and order of temporary commitment, and any other papers pertinent to the inquiry, and the court shall thereupon hear and determine the matter in a summary way without a jury, or he may, in his discretion, call a jury to determine the question of sanity and shall have power to compel the attendance of witnesses from any part of the state and also the attendance of jurors and the production of the patient either in court or at the place where the patient may be, and the production of the original application and certificates and any other papers or documents. The court is authorized to continue the final hearing in open court from time to time as may be necessary, and such continuance shall be indorsed on the application for commitment or certified copy thereof, and same shall be sufficient warrant and authority for the detention of the patient for such period. The aggregate period of continuances shall not exceed 3 months from the date originally fixed for final hearing. The county adjuster in all class "B" and class "C" cases shall forthwith notify the chief executive officer of the institution in which the patient is confined, of a continuance. The judicial officer shall also have power to order the taking and transcribing of the testimony adduced at the hearing, the expense of which shall be paid by the board of chosen freeholders of the county in the same manner as other court expenses are paid. The court may refer the matter of the examination of witnesses to the county adjuster and the county adjuster is hereby authorized and empowered to administer oaths or affirmations for this purpose. Additional compensation for the examination of witnesses by the county adjuster may be fixed by the judicial officer, subject to the approval of the board of chosen freeholders, and paid to the county adjuster in the same manner as compensation is paid to other county employees.

Source L 1918, c 147, p. 381, §416, as am L 1919, c 97, p 234, §21 [1924 Suppl §34-167]

30:4-44. First inquiry as to sanity. The court shall first inquire as to the sanity of the patient. If the patient shall be found to be sane, the judicial officer shall order his discharge forthwith, and the order shall be entered upon the minutes of the court. If the patient shall be found to be insane, the court shall then inquire as to his indigence and legal settlement.

Source L 1918, c 147, p 383, §419 [1924 Suppl §34-179].

30:4-65. Guardian to conserve estate and pay charges; bond of guardian. Where, on final hearing, it appears that the patient is possessed of

real or personal property and no arrangements have been made for the payment of his maintenance, and no application has been made for the appointment of a guardian of his estate, an application may be made to the superior court or the county court of the county from which the patient was committed, and such court shall have power to appoint some competent person, resident of this state, guardian of the estate during such commitment.

A guardian so appointed shall conserve the estate for the purpose of maintaining the patient in the institution in which he may be lawfully confined, and is authorized to pay such maintenance under the direction of the court. He shall furnish a bond as guardian in double the amount of the estate, conditioned for the faithful performance of his duties as guardian. If the chief executive officer of the institution, or the county treasurer of the county in which the institution is located, is appointed guardian, he shall not be required to furnish bond and the court making the appointment is authorized to make necessary directions for payment for maintenance. The guardian shall be discharged after accounting, without advertising, upon the death or discharge of the patient from confinement.

Source L 1918, c 147, p 388, §433 [1924 Suppl §34-184]

30:4-70. Collection of arrearages; modification of order of commitment. When any patient shall be committed to any state or county institution as an indigent patient, and it shall subsequently appear that such patient, or some person chargeable with his care and maintenance as provided for in this article, is able to pay all or any part of his care and maintenance, including arrearages, the attorney general or the county counsel, as the case may be, shall, as soon as he shall obtain such information, apply to the judge of the superior court or appropriate county court for the reopening of the matter, and such judge shall have the power at any time, in his discretion, to reopen the case, take additional testimony and inquire into the facts, and may commit such patient as a nonindigent patient if there shall be sufficient moneys to pay his full maintenance, as fixed by the management of the institution, and make such further order requiring the estate of such patient or the person or persons so chargeable by law to pay such amount for the care and maintenance of such patient as shall be specified in such order, and shall make such further order as may be necessary.

Source L 1918, c 147, p 393, §444 [1924 Suppl §34-195]

30:4-71. Change of status of patient from non-indigent to indigent; change of rate of payment. When any patient shall be committed to any state or county institution as a nonindigent patient and an order has been made directing the payment of the cost of the care and maintenance of such patient out of his estate, or by the person or persons chargeable by law with his care

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and maintenance, and such estate shall subsequently become exhausted or such person or persons chargeable as aforesaid shall become unable to continue such payments, or if such payments so due cannot be collected by the management of the institution, the guardian of such patient, or the person or persons chargeable as aforesaid, or the chief executive officer of such institution may apply in writing to the court in which issued the order of payment for the reopening of the matter, and such court shall have power, in its discretion, upon notice to the proper parties, to inquire into the facts, if necessary, and change the status of such patient to the indigent class, and make such further order of direction as may be necessary

When any patient shall have been or shall be committed to any state or county institution on an order directing the payment of the cost of the care and maintenance of such patient out of his estate or by the person or persons chargeable by law with his care and maintenance, it shall be lawful for the court, upon application of the management of the institution or the attorney general or county counsel, as the case may be, upon notice to the representative of the estate or to the person or persons chargeable by law with his care and maintenance, upon proof of the ability of the estate of such patient or such person or persons legally liable, to pay the whole or a greater portion of the cost of such care and maintenance, not exceeding the per capita cost of maintenance in such institution, to enter an order directing that such new rate be paid by such estate or by such person or persons chargeable by law with the care and maintenance of such patient

Source L 1918, c 147, p 394, §445 [1924 Suppl §34-196], as am L 1929, c 332, p 753, §3

30:4-72. Notice of change of class. No order changing the status of a patient from the non-indigent class to the indigent class shall be made without at least 10 days' notice of the application for such order to the county to be charged with the support of the patient, or to the state, as the case may be

Source L 1918, c 147, p 394, §446 [1924 Suppl §34-197]

30:4-73. Primary liability of county from which patient is committed; findings as to legal settlement, etc. The county from which any patient is committed shall be chargeable with the cost of the care and maintenance of any such patient committed to a state institution until the court shall find as a fact and the final order of commitment shall set forth whether the patient is indigent and has a legal settlement in the county or has such legal settlement but is found nonindigent. If the patient has no such legal settlement in the county then said county shall receive a credit adjustment to reimburse it for any such charges made against it for any such patient. If the order is made by the court of another county, a certified copy of the same shall

be filed with the clerk of the county charged. If it shall appear that the patient has a legal settlement in some other county then the cost of clothing and maintenance of any indigent patient which may have accrued prior to the determination of legal settlement in any county shall be paid by the county in which the settlement is determined to be. When a patient is admitted to an institution and dies or is removed therefrom for any cause before final hearing, the court having jurisdiction is authorized to make a judicial finding as to his admission, legal settlement and indigence for the purpose of providing for payment of maintenance and clothing during the patient's confinement. As amended L 1942, c 250, p 679, §1

30:4-80.3. Filing of lien; force and effect. The lien shall be filed with the clerk of the county or register of deeds and mortgages, as the case may be, and shall immediately attach to and become binding upon all real property in the ownership of the patient in the county wherein said lien is filed and shall have the force and effect of a judgment at law.

If it is believed that the patient is the owner of real property within the state, but the exact location of same is not known, then said liens may be filed with the clerk of the superior court and shall become binding upon all real property of the patient wherever situate within the state. L 1938, c 239, p 543, §3

30:4-80.5. Books for entry and indexing of liens; no fees required. The clerk of the county or register of deeds and mortgages, or clerk of the superior court, as the case may be, shall provide suitable books in which he shall enter the liens filed hereunder properly indexed in the name of the patient against whom the lien is claimed

All liens and other papers incidental thereto required hereunder shall be received and recorded by the clerk of the county, register of deeds and mortgages, or clerk of the superior court, as the case may be, without payment of fees by the institution claiming the lien. L 1938, c 239, p 543, §5.

30:4-80.6. Discharge of lien; compromise and settlement of lien. To discharge any lien or liens filed hereunder, the chief executive officer of the institution claiming the lien or his duly constituted agent shall file with the clerk of the county, register of deeds and mortgages or clerk of the superior court, as the case may be, a duly acknowledged certificate setting forth the fact that the institution desires to discharge the lien of record

The board of managers or board of freeholders, or a proper committee thereof, as the case may be, is hereby authorized to compromise for settlement any lien filed under the provisions of this act for the maintenance of any patient. A mem-

orandum of the compromise and settlement shall be entered in the official minutes of the board or committee and shall be sufficient authorization for a complete discharge of the lien. As amended L. 1947, c. 274, p. 978, §4.

30:4-80.7. Application for review of validity of lien; notice; hearing; discharge of lien by deposit or bond. Any person affected in any manner, whether directly or indirectly, by any lien filed hereunder, and desiring to examine into the validity thereof or the facts and circumstances surrounding the entry thereof, may do so upon application to the court wherein the order of commitment of the patient was made. In the case of a voluntary patient, application may be made in the county court of the county wherein such voluntary patient last resided.

Any person desiring to secure immediate discharge of any lien may deposit with the court cash in sufficient amount to cover the amount of the lien or post a bond in an amount and with sureties to be approved by said court. Upon proper notice of this fact being given to the institution claiming the lien, a satisfaction of said lien shall be filed forthwith with the county clerk or register of deeds and mortgages as the case may be. L. 1946, c. 306, p. 1012, §2, supplementing L. 1938, c. 239.

30:4-82. Confined persons transferred to institutions for insane, epileptic or feeble-minded; order of court; procedure. If any person in confinement under commitment, indictment or sentence, or under any process, shall appear to be insane, epileptic, imbecile or feeble-minded, a judge of the superior court of the county in which such person is confined, or judge of the county court or the juvenile and domestic relations court of such county, may, upon presentation to him of the application and certificates herein above provided, institute an inquiry and take proofs as to the mental or physical condition and legal settlement of such person in the manner and form hereinbefore provided, pending which inquiry such person may be temporarily confined in an appropriate public institution in this state, upon an order of such judge.

If such judge shall determine that said person is insane, epileptic, imbecile or feeble-minded, he shall order that such person be removed from imprisonment, and that he be confined in one of the institutions for the care and treatment of such persons owned by this state, or if such justice or judge shall deem it expedient, in an institution for the care and treatment of such persons owned by one of the counties of this state, until such person is cured or removed or discharged according to law. Such order shall contain a determination of such person's condition, and if such judge shall find that such person has no legal settlement in any county in this state, he shall be maintained in such institution at the expense of the state, and if he has a legal

settlement in any county in this state he shall be maintained by such county. Such judge shall file such order with the clerk of the county, and such clerk shall forthwith forward a certified copy of such order to the sheriff or chief executive officer of the institution from which such person is to be discharged, and to the chief executive officer of the institution in which such person has been ordered confined. Such judge may, in his discretion, order the removal of such person so confined as aforesaid from the institution in which he is confined, and may order his confinement in another one of the institutions in this state. Such judge shall file such order with the clerk of the county from which such person was originally committed, and such clerk shall forthwith forward a certified copy of such order to the chief executive officer of the institution from which such person is to be removed, and likewise to the chief executive officer of the institution in which such person is to be confined.

When, however, such person is in a condition to be discharged from the institution to which he has been removed, as cured, upon that fact being certified by the chief executive officer to the judge such person shall be remanded by order of the judge to the place in which he was confined under commitment, indictment or sentence, or other process as aforesaid, there to be dealt with according to law, unless the maximum period of detention fixed by sentence or operation of law, shall meanwhile have expired, in which case such inmate shall be discharged from custody when cured. This certificate, together with the order of the judge, shall be filed with the clerk of the county, and such clerk shall forthwith forward a certified copy of such order to the chief executive officer of the institution from which such person is remanded.

Source: L. 1918, c. 147, p. 390, §437 [1924 Suppl. §34-188]

30:4-106.2. Parole of second and subsequent offenders. As used in this section "penal institution" means and includes the New Jersey state prison, and other institutions of like character under the jurisdiction of other states.

Any offender sentenced to any penal institution, as defined in this section, and who has previously served a term in any penal institution of the United States, this state, or any other state of the United States, shall be deemed a second offender, and upon his incarceration for such second offense be ineligible for parole, unless he shall have served at least one-half of such sentence so imposed.

Any offender sentenced to any penal institution in this state and who has previously served 2 terms in any penal institution of the United States, in this state, or any other state of the United States, shall be deemed a third offender, and upon his incarceration shall be ineligible for parole unless he shall have served at least three-fourths of the maximum sentence so imposed.

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Any offender sentenced to any penal institution of this state and who shall have previously served 3 terms in any penal institution of the United States, this state, or of any other state of the United States shall be deemed and adjudged to be a fourth offender, and upon his incarceration shall serve the maximum penalty imposed by the court

Nothing in this section contained shall be construed to in any wise interfere with the constitutional powers of the governor

Source R S 30 4-106 2

30:4-131. Witnesses; contempt; hearing. A person refusing to obey a summons issued pursuant to section 30 4-129 of this title may on application to a judge of the county court of the county in which the hearing is to be held, be brought before any judge of such court and after summary hearing may in the discretion of the judge be held in contempt of court for refusal or willful neglect to obey the summons Such contempt may be purged on such terms as the court or judge may impose

Source L 1919, c 139, p 310, §1(200b) [1924 Suppl §34-78], suppl to L 1918, c 147, p 343

30:4-138. Executive of prison; responsibility. The principal keeper shall be the chief executive and administrative officer of the board of managers in charge of the state prison If at any time there shall fail to be a board of managers, its powers and duties shall be exercised by the chief executive officer, except that in such case the state parole board shall be the sole power authorized to issue and revoke paroles

Source R S 30 4-138

30:4-157.1. Delinquent boys committed to state home for boys; authorized, when. Whenever any boy under the age of 16 years and of the age of 8 years or more shall be found guilty of any crime, except murder, in any court of record, the court, instead of entering judgment and pronouncing sentence according to law, may cause an order to be entered in the minutes of such court that such boy be committed to the state home for boys as a juvenile delinquent, and thereupon the court may commit him to such home by warrant

Source L 1918, c 147, p 369, §324, as am L 1922, c 82, p 152, §1 [1924 Suppl §34-142]

30:4-157.2. Warrant of commitment; papers and records. The warrant of commitment to the state home for boys shall set forth the names of the parents or guardians if they can be ascertained and the boy's place of residence The court shall order transmitted to the chief executive officer of the home, by the officer serving the papers of commitment a statement of the substance of the complaint, a copy of any probation reports or other records which the county may have concerning the past delinquencies of the boy together with such of the testimony in the case as appears to show contributory negli-

gence on the part of the boy's custodians and such other information concerning any mental or physical condition which the court deems to be of importance in the reformation or rehabilitation of the boy Such records shall be used for the information and guidance of the board of managers of the home and the department of institutions and agencies but shall not be public records

Source L 1918, c 147, p 369, §324, as am L 1922, c 82, p 152, §1 [1924 Suppl §34-142]

30:4-157.3. Complaint of truancy, disorderly conduct, etc.; commitment; security for payment of expenses. Any parent or guardian may make complaint to the judge of the juvenile and domestic relations court that any boy under the age of 16 years, the son or ward of complainant, is habitually truant or habitually vagrant or disorderly or incorrigible The judge shall thereupon issue a warrant to the sheriff, constable or police officer to cause the boy to be brought before him at such time and place as he may appoint, when and where the judge shall examine the parties, and if, in his judgment, the complaint is well founded and the boy is a fit subject for the state home for boys, he shall issue a warrant, with the consent of the parent or guardian indorsed thereon, to be executed by the sheriff, a constable or police officer committing the boy to the home

Security for the payment of the expenses of the hearing upon complaint and commitment, the expenses of the transfer of the boy to the home and the expenses of his board and maintenance at the home may, in the discretion of the judge, be required of the parent or guardian in cases arising under this section or section 30 4-157 1 of this title

Source L 1918, c 147, p 369, §325 [1924 Suppl §34-143]

30:4-157.4. Expenses of commitment and board. Whenever a boy or girl shall be committed to the home under the provisions of sections 30 4-157 1, 30 4-157 3 or 30 4-157 9 of this title, it shall be the duty of the judge, at the time of the examination, to make inquiry as to the ability of the parent or guardian to pay the expenses of the commitment proceedings and the board of the boy or girl, and he shall indorse on the warrant of commitment a statement of his finding in that regard

Payment by the parent or guardian of these costs shall be made to the probation officer or county adjuster, whichever the court shall designate, provided, however, that upon collection thereof the costs of the commitment proceedings shall be paid to the county treasurer, and any amount received representing maintenance shall be forwarded to the institution wherein the inmate is confined In the event of failure of the parent or guardian to pay the amount ordered by the court then the probation officer or county adjuster, as the case may be, shall bring the matter before the court for such further order

as shall appear proper therein to compel payment. As amended L 1939, c. 301, p. 730, §1.

30:4-157.5. Fees allowable. For making copies of a complaint and commitment under sections 30 4-157 1 to 30 4-157 3 of this title, the clerk of the court shall be paid the same fees as are allowed by law for the original complaint and commitment.

The fee for serving process shall be the same and shall be paid in the same manner as for like service in civil cases

The sheriff, constable or officer executing a warrant of commitment shall be entitled to a fee of \$5 00 besides the necessary traveling expenses for himself and the boy, to be taxed by the judge

Other fees shall be the same as are allowed for similar services in the county court, and all such fees shall be paid as other fees are paid in civil causes

Source L 1918, c 147, p 370, §327 [1924 Suppl §34-145]

30:5-4.3. Jurisdiction of superior court and county court; costs. The superior court and the county court of the county where the commitment was made shall have jurisdiction to hear and determine any and all actions affecting the guardianship of the state board of children's guardians The county court of each county shall have jurisdiction to hear and determine complaints by the said board, on behalf of its wards, for the transfer of any or all assets being held by guardians previously appointed. The superior court or county court, as the case may be, shall have jurisdiction to fix and determine, in its discretion, such costs as shall be paid by the state board of children's guardians in all actions on behalf of its wards.

Source. P L 1938, c 160, p 343, §3

30:5-19. Complaint to juvenile and domestic relations court; when and persons authorized to make. Whenever (a) it appears that the father or both parents of any minor child are unable to support him because of imprisonment or physical or mental illness, are dead, or cannot be found, and there is no other person financially able and legally liable for the support of such child; or (b) it appears that the court, wherein a complaint has been proffered as provided in chapter 6 of Title 9, Children—Juvenile and Domestic Relations Courts (9 6-1 et seq), has entered a conviction against the parent or parents, guardian, or person having custody and control of any minor child, because of abuse, abandonment, neglect of or cruelty to such child, or (c) it appears that any minor child has been adjudged delinquent by a court of proper jurisdiction, or (d) it appears that, for reasons other than the lack of sufficient financial resources to provide for proper care and maintenance, the best interests of any minor child require that he be placed under proper guardianship, a complaint may be filed by any person, or any association or corporation

having as one of its objects the prevention of cruelty to children, interested in such minor child, with the juvenile and domestic relations court of the county where the child has residence, setting forth the facts in the case
Source R S 30 5-19, as am P L 1942, c 223, p 601, §1

30:5-20. Complaint by incorporated welfare or child-caring society; summary of record of case filed and served; copy of record of conviction filed; concurrent jurisdiction of county court. Where the plaintiff is a duly incorporated welfare or child-caring society it shall file with the complaint a summary of its records of the case, and a copy thereof shall be served on the county adjuster or the official designated by the board of chosen freeholders and on the state board of children's guardians

Where a complaint has been proffered as provided in chapter 6 of Title 9, Children—Juvenile and Domestic Relations Courts (§9 6-1 et seq), and the case was not tried before the court in which the complaint is filed, a copy of the record of the conviction shall be filed with the complaint

The judge of the county court of such county shall have concurrent jurisdiction with such juvenile and domestic relations court to hear and determine matters pursuant to the provisions of this chapter

Source R S 30 5-20

30:5-21. Copy of complaint and notice of hearing to be served; interlocutory order of commitment. The court shall cause a copy of such complaint and notice of the time and place when the court will hear the same, to be served on or mailed to the state board of children's guardians, and the board of chosen freeholders of such county at least 20 days before such time, and to the parents, guardian or person having the custody or control of such child at the last known address of same at least 10 days before such time; provided, however, that when there shall be filed with the complaint a statement or statements made under oath and attesting that the best interests of the child require that he be placed under the custody and control of the state board of children's guardians immediately and pending final hearing, the court, at a special and summary hearing held upon notice to the state board of children's guardians and the board of chosen freeholders, may make an interlocutory order committing such child to the state board of children's guardians until a final hearing on the complaint Such interlocutory order shall have the same force and effect, and establish the same financial obligations, as an order of commitment provided for in section 30.5-26 of this title.

Source. R S 30 5-21, as am P L 1942, c 223, p 602, §2

30:5-22. Verification of complaint and facts by board of children's guardians; report by board of children's guardians. Immediately upon receipt of the notice, and copy of complaint men-

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tioned in section 30 5-21 of this title, the state board of children's guardians shall verify the complaint and all the facts pertaining to the child's eligibility for commitment as a public charge or charges

Prior to the return day, the state board of children's guardians shall make and file a report of its findings with the court, with the county adjuster or the county official designated by the board of chosen freeholders to represent it in these matters, particularly as to the eligibility or ineligibility of the mother or person standing in loco parentis for relief, assistance and support under the provisions of article 4 of this chapter (§30 5-33 et seq.). The report shall also show what income the family has including wages and any real or personal property owned or held for the parents and children, the facts necessary to determine in which county, if any, they have last resided continuously for 1 year and such other facts as will assist the court in arriving at a decision in the matter.

Source R S 30 5-22

30:5-27. Order committing child to custody of incorporated charitable society. If, in any county of this state wherein children are now being maintained at public charge under the care of a duly incorporated charitable society, under an act entitled "An act to provide for the incorporation of associations for the erection and maintenance of hospitals, infirmaries, orphanages, asylums and other charitable institutions," approved March 9, 1877, the director of welfare deems it for the best interests of any such child under the age of 16 years, that such child be committed to the care, custody and control of such duly incorporated charitable society in such county for such time as may be for the best interests of such child or until such child arrives at the age of 16 years, such director of welfare may institute a civil action demanding that such a commitment be made, in which case such court may make an order committing such child to the care, custody and control of such duly incorporated charitable society in such county, which order shall contain a provision ordering the county to pay its share of the expenses for the care of such child, including the board, clothing, medical and surgical treatment while such child is in such care, custody and control, and shall also contain a provision fixing the date from which such payment of expenses for the care of such child shall be chargeable, the date being not earlier than the date of the filing of the complaint demanding such relief

Source. R S 30 5-27

30:6-3. Persons eligible to relief; application; residence of applicants; investigations; amount of relief. Any person of either sex, above the age of 18 years, who by reason of blindness is unable to earn sufficient money to provide for the necessities of life, and who has no relatives or

other person able to provide and legally responsible for his maintenance, excepting that grandchildren even if able to provide shall not be legally responsible for his maintenance, and who, if not relieved, would lack adequate support, is a proper person to make application to the welfare board of the county wherein he resides for the relief granted by this article

Any person making application under the terms of this article shall first have been a resident of this state continuously for 1 year immediately prior to the making of such application

Whenever anyone deemed a proper person to make application for relief as provided for in this article shall make application to the welfare board, the welfare board shall fully investigate and establish the facts as set forth in the petition and as outlined above, as well as other facts it deems necessary, including the county of the state in which the applicant has last resided continuously for 1 year Upon completion of its investigation the welfare board shall then present a recommendation, together with a copy of the application and record of its investigation, to the commission for relief for the person named in order that the commission may ameliorate the condition of the blind person named, in the manner set forth in this article; but the sum asked for or granted shall be sufficient when added to all other income and support of the individual to provide such person with a reasonable subsistence compatible with decency and health

The welfare board may in its discretion order the petitioner to appear before it or its representative appointed to act with the commission in establishing the facts set forth in the petition, or may make such further investigation as it deems necessary. Whenever the facts set forth in the petition shall have been fully established, the welfare board shall recommend relief in the amount provided by law.

The commission shall supervise the administration by the counties of the relief made available hereunder, and shall establish and enforce such rules and regulations as may appear necessary or desirable to carry out the provisions of this act All such rules and regulations shall be binding upon the county departments.

The commission shall further establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department The use of such records, papers, files and communications by any other agency or department of government to which they may be furnished shall be limited to the purpose for which they are furnished and by the provisions of the law under which they may be furnished The commission shall have power to enter into reciprocal agreement with appropriate public agencies in other states whereby blind assistance benefits may be extended to New Jersey residents living in other states or to resi-

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dents of other states living in New Jersey on a reciprocal basis, and shall have the power to waive the eligibility requirement of residence for any individual coming within the purview of reciprocal agreement

All relief granted under this article is granted with the understanding that the amount is to be available only for the use of the commission, which shall expend it only on behalf of the person named in the petition and for whom the relief is granted

Any applicant or recipient denied relief, aggrieved because of a welfare board decision or delay in making same or having other cause for appeal from the decision of the commission or of the county welfare board, may appeal to the state board or to its designated representative in the manner prescribed by the state board, and shall be afforded reasonable notice and opportunity for a fair hearing by the state board. All decisions of the state board shall be final and shall be binding upon and shall be complied with by the county welfare board

Nothing contained herein shall be construed to affect the right of any applicant to institute an action in lieu of a prerogative writ.

Source R S 30 6-3, as am P L 1944, c 241, p 800, §1, P L 1946, c 168, p 737, §1

30:6A-2. Honorably discharged veterans admitted to home for disabled soldiers. A person may be admitted as an inmate to the New Jersey home for disabled soldiers on the certificate of a judge of the county court upon proof made to his satisfaction by the written certificate of a reputable physician and such other proof as he may require that the applicant has been a soldier, sailor or marine in the army or navy of the United States, has been honorably discharged therefrom, is necessitous and has not the ability to procure the means sufficient for his comfortable support and necessary care and attendance

Source 30 6A-2

30:8-28. Parole; conditions; violation. The judge of the county court may, in his discretion, upon recommendation of the sheriff, grant a parole in the custody of the county probation officer or any other fit person whom the court may designate, to any prisoner under sentence to confinement in the county jail, upon terms to be fixed by the judge, and the earnings of such prisoner while on parole shall be paid by the employer to the designated parole agent to be disbursed by him for the benefit of such prisoner or such person or persons as may be legally dependent on such prisoner for support as the court in granting the parole may direct. The county probation officer or parole agent may at any time return such paroled prisoner to the county jail for breach of the conditions of the parole and the sheriff or keeper of the jail shall receive the prisoner on certificate of such probation officer or parole agent stating the breach

of conditions, whereupon the return and the reason therefor shall be immediately reported to the judge. In no case shall the term of parole exceed the term for which the prisoner was sentenced

Source R S 30 8-28

30:8-33. Prisoners who may be sent to workhouse; hard labor. In each county having a workhouse every person sentenced to imprisonment at hard labor for not more than 6 months shall be delivered by the sheriff or other proper officer of the county in which the conviction was had to the master of the workhouse, together with a copy of the sentence of such court, certified under the hand and seal of the clerk of such court or an order under the hand and seal of 1 or more of the judges or magistrates of the county by whom sentence may be imposed, and shall be there received and safely kept to hard labor, agreeably to such sentence, by the master of the workhouse for the term of his sentence and for such further time as the costs of prosecution and fine, if any, shall remain unpaid, unless the prisoner be sooner discharged in due course of law

This section shall not apply to an offender whose sentence shall be imprisonment or the payment of a fine, or imprisonment and the payment of a fine, without the addition of hard labor in either case.

Source R S 30 8-33

30:9-2. Architect appointed by superior court; duties. The erection of a county lunatic asylum shall be under the direct supervision of a competent architect who shall be appointed by the superior court of the county. He shall prepare or approve the plans, specifications and contracts, certify to the correctness of all payments or approve them in writing before they shall be made, report in writing to the court and board of chosen freeholders from time to time the progress of the work, report in writing whenever the court or board may require it, the condition of the work or any portion thereof. The board may direct the attention of the court to any part of the work of which complaint may be made

The architect's compensation shall be fixed by the court and paid by the board from time to time as the court shall direct. He may be removed and a successor appointed at the pleasure of the court

Source R S 30 9-2

30:9-10. Disagreement as to cost of maintenance of patients; proceedings in superior. In the event of a single board erecting such hospital and the 2 boards cannot agree as to the sum to be paid for the maintenance of such patients, as aforesaid, by the board which does not join in the work of building, either board may present a complaint to the superior court, which court shall in a summary manner give a hearing to the parties, on such notice as the

court may determine, and fix and determine the sum to be paid per week per patient by such board, as aforesaid.

Source R S 30 9-10

30:9-53. Executive officer; duties. The superintendent shall be chief executive officer of the hospital and, subject to the rules and regulations, and to the powers of the board of managers, board of chosen freeholders or committee, as the case may be, shall have general supervision and control of the records, accounts and buildings of the hospital, and its internal affairs, and maintain discipline, and enforce all rules and regulations, shall make such further rules, regulations and orders as he may deem necessary, not inconsistent with law or with the rules, regulations and directions of the board of managers, shall, with the consent of the board of managers, appoint such resident officers and such employees as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties, and for cause stated in writing, after an opportunity to be heard, may discharge any officer or employee, shall cause proper accounts and records to be kept regularly from day to day in books and on records provided for that purpose, and cause such accounts and records to be correctly made up for the annual report to the board of freeholders, and presented to the board of managers or committee, as the case may be; shall receive into the hospital, under the general direction of the board of managers, in the order of application, any person found to be suffering from tuberculosis in any form, who has a legal settlement in the county, or who has been an actual resident and inhabitant of the county for a period of at least 1 year prior to his application for admission, or any person who may be committed to the hospital by order of a judge of the county court, shall cause to be kept proper accounts and records of the admission of each patient, his name, age, sex, color, marital condition, residence, occupation and place of last employment, shall cause a careful examination to be made of the physical condition of each person admitted and provide for the treatment of each patient according to his needs, and shall cause a record to be kept of the condition of each patient when admitted and from time to time thereafter, shall temporarily discharge any patient who shall willfully or habitually violate the rules or who is found not to have tuberculosis, or who is found to have recovered, or who for any other reason is no longer a suitable patient for treatment, and shall make a full report thereof at the next meeting of the board of managers or committee, as the case may be, who shall make such final disposition of the case as they may think proper, shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at a monthly meeting of the board of managers

or committee, as the case may be, and transmit the same to the county treasurer within 10 days after such meeting; shall, before entering upon his duties, give a bond in such sum as the board of managers may determine to secure the faithful performance of his duties

Source R S 30 9-53

30:9-54. Application for admission; examination of applicant; legal settlement and ability to pay determined; findings; expenses of maintenance by county; by state; no discrimination; gratuities forbidden; detention of patient; medical superintendent in charge of patients. Any resident of the county in which the hospital is situated, desiring treatment in such hospital, may apply in person to the superintendent or to any reputable physician for examination, and such physician, if he find that said person is suffering from tuberculosis in any form, may apply to the superintendent of the hospital for his admission. Blank forms for such application shall be provided by the hospital, and shall be forwarded by the superintendent thereof gratuitously to any reputable physician in the county upon request. So far as practicable applications for admission to the hospital shall be made upon such forms. The superintendent of the hospital, upon receipt of such application, if it appears therefrom that the patient is suffering from tuberculosis, and if there be a vacancy in the said hospital, shall notify the person named in such application to appear in person at the hospital. If, upon personal examination of such patient, or of any patient applying in person for admission, the superintendent and the board of managers or said committee of said board of chosen freeholders as the case may be, are satisfied that such person is suffering from tuberculosis, he shall admit him to the hospital as a patient. All such applications shall state whether, in the judgment of the physician, the person is able to pay in whole or in part for his care and treatment while at the hospital; and every application shall be filed and recorded in a book kept for that purpose in the order of their receipt. Provided, further, that the legal settlement and the financial ability of the patient or the person or persons chargeable with his or her support, shall be determined in the same way and by the same method that those facts are determined in the case of insane patients under chapter 4 of this title (§30 4-1 et seq), and a copy of the finding of the judicial officer shall be forthwith filed in the office of the clerk of the county in which such patient is confined and a copy duly certified by the clerk of the county shall be forthwith forwarded to the superintendent of the hospital to which the patient is admitted and by him kept on file, and if it appears by said finding that the patient has a legal settlement in any county of this state and is indigent, then he shall be supported in said institution at the expense of the county in which he has a legal settlement,

and if it appears by said finding that the patient has no legal settlement in any county of this state, then he shall be maintained at the expense of the state, provided, however, that if said patient shall have a legal settlement in any county of this state other than the county in which he makes application for admission, and the county in which he has a legal settlement maintains an institution for the care and treatment of persons suffering from tuberculosis under sections 30 9-45 to 30 9-60 of this title, then it shall be the duty of the superintendent of the institution to which he has been admitted to notify the superintendent of the institution of the county in which he has a legal settlement of the fact of his admission to the institution and the judicial finding as to his legal settlement and indigency, and said patient may be transferred to the institution in the county in which he has a legal settlement, by the superintendent of the institution of that county, unless the judicial officer who determines the legal settlement shall certify that, in his opinion, his removal from the county would be detrimental to the patient's health, or against the best interests of the patient's family, and in that event, he shall be maintained as aforesaid in the institution to which he has been admitted. Provided, however, that the county in which he has a legal settlement shall be bound for the patient's maintenance until he be transferred as aforesaid. The expense of his maintenance in any institution of any county in which the patient has not a legal settlement shall be paid by the county in which he has a legal settlement if any such there be in this state, upon bills rendered by the superintendent of the institution in which he is maintained, to the board of chosen freeholders of the county in which he has a legal settlement, and suit may be maintained in any of the courts of this state having jurisdiction of the subject matter, for the collection of the same. And if the expense of maintenance of said patient is chargeable to the state under the provisions of said sections 30 9-45 to 30 9-60, then the state shall pay for said maintenance in the same way it pays or contributes toward the support of indigent patients in any other institutions of this state according to the provisions of said chapter 4. Nothing herein contained, however, shall permit the removal of the patient to the state institution for the care and treatment of tuberculosis against his will. When said hospital is completed and ready for the treatment of patients or whenever thereafter there are vacancies therein, admission to said hospital shall be made in the order in which the names of applicants shall appear upon the application book to be kept as above provided, in so far as such applicants are certified to by the superintendent to be suffering from tuberculosis. No discrimination shall be made in the accommodation, care or treatment of any patient because of the fact that the patient or

his relatives contribute to the cost of his maintenance in whole or in part, and no patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital, and no officer or employee of such hospital shall accept from any patient thereof any fee, payment or gratuity whatsoever for his services, and any such person having been so admitted shall not be discharged without having first obtained permission of the superintendent or board of managers of such hospital, so that such person may not become a menace to the community. The board of managers or said committee of said board of chosen freeholders, as the case may be, shall have the right to hold and detain any patient admitted to said hospital when in their judgment it is for the benefit of said patient or for the community that said patient remain therein, but said patient or any person as his next friend, may apply to the county court in a summary manner for the discharge of said patient. The medical superintendent shall have the custody and control of every person admitted as a patient to said hospital and shall properly discharge and, subject to the regulations established by the board of managers, or of said committee of said board of chosen freeholders, as the case may be, may restrain and discipline any patient in such manner as in his opinion is required for the welfare of said patient.

Source R S 30 9-4

30:9-57. Commitment for failure to observe rules; discharge; parole. A person who fails to obey the rules or regulations promulgated by the state department of health for the care of tubercular persons and for the prevention of the spread of tuberculosis, or who is an actual menace to the community or to children in his household, may be committed to the county hospital, or, in case there is no county hospital in the county in which the patient resides, then to a hospital, either in said county or in another county, at which the board of chosen freeholders of the county in which the patient resides makes provisions for tubercular patients, by any judge of the county court upon proof of service upon him of the rules and regulations and proof of violation thereafter, or upon proof by any health officer of the municipality in which the person may reside, or by the director of health of New Jersey or his authorized representative, that he is suffering from tuberculosis, and is an actual menace to the community, or to children in his household. At least 2 days' notice of the time and place of hearing shall in all cases be served upon the person to be committed. Proof of such service shall be made at the hearing. The court may also make such order for the payment for care and treatment as may be proper. After

commitment such person may be discharged by the court at any time it considers proper, or the court may, in the order of commitment or by subsequent order, authorize the superintendent of the institution to parole or discharge such patients in accordance with the same rules and regulations governing the parole and discharge of other patients in said institution

Source R S 30 9-57, as am P L 1942, c 224, p 604, §1, P L 1948, c 42, p 127, §1

30:9-65. Executive officer; duties. The superintendent shall be the chief executive officer of the hospital and subject to the rules and regulations and to the powers of the board of managers

Shall have general supervision and control of the records, accounts and buildings of the hospital and its internal affairs, and maintain discipline and enforce all rules and regulations and make such further rules and regulations as he may deem necessary not inconsistent with law or the rules, regulations and directions of the board of managers;

Shall with the consent of the board of managers appoint such resident officers and such employees as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties, and for cause stated in writing after opportunity to be heard, discharge or suspend any officer or employee, subject to formal investigation by the board of managers,

Shall cause proper accounts and records to be kept regularly from day to day in books and on records provided for that purpose and cause such accounts and records to be correctly made up for the annual report to the board of freeholders and presented to the board of managers,

Shall receive into the hospital under the general direction of the board of managers, in the order of application any person suffering from a communicable disease who has a legal settlement in the county or who has been an actual resident and inhabitant of the county for a period of at least 1 year prior to his application for admission or who may be committed to the hospital by order of a county judge,

Shall cause to be kept proper accounts and records of the admission of each patient, his name, age, sex, color, marital condition, residence, occupation, and place of last employment;

Shall cause a careful examination to be made of the physical condition of all persons admitted and provide for the treatment of each patient according to his need, and shall cause a record to be kept of each patient when admitted and from time to time thereafter,

Shall temporarily discharge any patient who shall willfully or habitually violate the rules, or who is found not to have a communicable disease, or who is found to have recovered, or who for any other reason is no longer a suitable patient for hospital treatment, and shall make full report thereof at the next meeting of the board of

managers, who shall make such final disposition of the case as they may think proper,

Shall collect and receive all moneys due to the hospital, keep an accurate account of the same, report the same at a monthly meeting of the board of managers and transmit the same to the county treasurer within 10 days after such meeting;

Shall before entering upon the discharge of his duties, give a bond in such sum as the board of managers may determine to secure the faithful performance of his duties

Source R S 30 9-65

30:9-66. Application for admission; legal settlement; maintenance; discharge. A resident of the county desiring treatment in the county hospital established under section 30 9-61 of this title may apply for examination to the superintendent or to a reputable physician Such physician if he find that the applicant is suffering from a communicable disease in any form, except tuberculosis, may apply to the superintendent for his admission.

30:9-66. Application for admission; legal settlement; maintenance; discharge. A resident of the county desiring treatment in the county hospital established under section 30 9-61 of this title may apply for examination to the superintendent or to a reputable physician Such physician if he finds that the applicant is suffering from a communicable disease in any form, except tuberculosis, may apply to the superintendent for his admission

All applications shall state whether in the judgment of the physician, the patient is able to pay in whole or in part for his care and treatment Each application shall be filed and recorded in a book kept for that purpose in the order of its receipt.

The admission and transfer of tubercular patients, and the determination of legal settlement and liability for cost of care and maintenance of all patients shall be in so far as practicable in accordance with sections 30 4-23 to 30 4-105 and 30 9-45 to 30 9-60 of this title

Tubercular patients shall be admitted in the order in which the names of applicants appear in the application book

No discrimination shall be made in the accommodation, care or treatment of any patient because of any payment of maintenance and no officer or employee shall accept from a patient any fee, payment or gratuity for services

When in the judgment of the board of managers the further detention of a patient is for his benefit or the benefit of the community, he may be so detained No patient shall be discharged without first obtaining permission of the superintendent or board of managers

The medical superintendent shall have the custody and control of the patients and within the regulations of the board of managers may

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restrain and discipline a patient in such manner as in his opinion the welfare of the patient requires. He shall discharge a patient whenever cured or whenever further detention would not benefit the patient or the community.

A patient to whom discharge is refused, or any person as his next friend, may apply to the county court in a summary manner for such discharge.

Source R S 30 9-66

30:9-68. Circumstances and family liability as affecting payment of maintenance; disputes. Whenever a patient is admitted from the county in which the hospital is situated the superintendent shall cause inquiry to be made as to his circumstances. If he finds that the patient or legally responsible relatives are able to pay for

his care and maintenance in whole or in part he shall order payment to the treasurer of the hospital of a specified sum per week in proportion to the financial ability of the patient or such relative, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have the same power to collect such sum from the estate of the patient or relatives as is possessed by an overseer of the poor in like circumstances. If the superintendent finds that the patient or his relatives are unable to pay, the cost shall become a charge upon the county. Should there be dispute as to ability to pay or doubt in the mind of the superintendent the county court may hear witnesses and make such order as may be proper.

Source R S 30 9-68

PROPOSED REVISION

Title 31. INTEREST AND USURY

31:1-4. Borrower may compel discovery, and acceptance of principal alone. Any borrower of money or other personal property may by a civil action in the superior court against the lender, compel him to discover, upon oath, the money or other personal property really lent, and all agreements, devices, shifts, bargains, contracts and conveyances which shall have passed

between them relative to such loan, or the repayment thereof, and the interest or consideration for the same. If thereupon it shall appear that more than lawful interest was taken or reserved the lender shall be obliged to accept his principal money, or the personal property or the value thereof, without any interest or other consideration, and to pay costs.

Source Rev 1877, p 519, §4 [C S p 5705, §4]

PROPOSED REVISION

Title 32. INTERSTATE AND PORT AUTHORITIES AND COMMISSIONS

32:1-35.15. Procedure in condemnation proceedings; payment of damages; transfer or pledge of award; abandonment; title. Subject to the foregoing limitations, the port authority may exercise the right of eminent domain or condemnation to acquire real property for air terminal and marine terminal purposes as set forth in this section.

a As used in this section, unless otherwise expressly stated or unless context or subject matter otherwise requires, the following terms shall mean:

1. "Days", calendar days exclusive of Sundays and full legal holidays.

2. "Owner"; a person having an estate, interest or easement in the real property being acquired or a lien, charge or encumbrance thereon.

b Whenever the port authority shall determine that it is necessary to acquire real property for

air terminal purposes for the public use by the exercise of the right of eminent domain or condemnation, it shall prepare 3 similar surveys, diagrams, maps, plans or profiles of the real property being acquired, stating thereon that the port authority has determined that it is necessary to acquire said property, and the amount or valuation at which each parcel of real property to be acquired has been assessed for purposes of taxation on the tax rolls for each of the 3 years preceding, and if the interest being taken shall be less than the fee, the estimated value of such interest, 1 of such surveys, diagrams, maps, plans or profiles shall be filed in the office of the secretary of the port authority, the second shall be filed in the office in which instruments affecting real property are required to be recorded, in the county in which such real property is situated, and the third copy shall

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be filed in the office of the clerk of the superior court, and it shall file in the office of the clerk of the county, or register of deeds and mortgages, as the case may be, where the real property to be acquired or any part thereof is situated a notice of the pendency of a proceeding for the acquisition of such property. Such notice shall briefly state the object of the proceeding and shall contain a brief description of the real property being acquired thereby. It shall also state the names of such of the owners of such real property as may be known to the port authority, and in case any of the owners are unknown, a statement to that effect shall be made in such notice. Such notice, from the time of filing, shall be constructive notice to a purchaser or encumbrancer of the real property affected thereby from or against any person interested as owner with respect to whom the notice is directed to be indexed.

It shall be lawful for the duly authorized agents of the port authority, and all persons acting under its authority and by its direction, to enter in the daytime into and upon such real property which it shall be necessary so to enter, for the purpose of making such surveys, diagrams, maps or plans, or for the purpose of making such soundings or borings as the port authority may deem necessary.

c Whenever any land or other property taken for public use shall lie or be in 2 or more counties, all reports, petitions, orders and other papers required to be filed shall be filed in the clerk's office or the register's office as the case may be, of the county in which the greater part in value of the land or other property is situate and a certified copy thereof shall be filed and recorded in the clerk's office of the other county or counties. The commissioners, if any be designated, shall be residents of the county in which the greater part in value of the land or other property is situate.

d Upon the filing of the lis pendens, the port authority shall cause notice by advertisement to be published on 1 day in each of 4 successive weeks in a newspaper published and of general circulation in the county in which the real property to be acquired is located, of its intention to make application to one of the judges of the superior court, at a time and place to be stated in such notice, to have the compensation which should justly be made to the respective owners of the real property proposed to be taken, ascertained and determined by the judge. Such notice shall indicate the real property to be taken by a general description and by reference to the map on file in the office of the port authority, in the office in which instruments affecting real property are required to be recorded, and in the office of the clerk of the superior court.

e In addition to the provisions contained in subdivision (d) above, written notice of the application shall be given by the port authority to the owners of all property affected by the pro-

ceeding at least 10 days prior to such application, by mailing the same to such owners at the address registered or filed with the collector of taxes for the purpose of forwarding to them bills for taxes or assessments. Such notice shall state the purpose for which the property is to be acquired and the date when such application will be presented and shall contain a copy of such application. Failure to comply with the directions contained in this subdivision shall not invalidate or affect the proceeding.

f Upon the application to condemn, the port authority shall present to the judge a verified complaint setting forth.

1 The action had by the board of commissioners of the port authority with reference to the proceedings;

2 The real property to be acquired therein by setting forth a specific description thereof, and its location with reasonable certainty and by reference to the map on file in the office of the port authority, in the office in which instruments affecting real property are required to be recorded, and in the office of the clerk of the superior court, a copy of which shall be attached to the petition;

3 The amount of valuation at which each parcel of the real property to be acquired has been assessed for purposes of taxation on the tax rolls for each of the 3 years preceding the date of the petition, or if the interests being taken shall be less than the fee, the estimated value of such interest;

4 A demand that the real property, described therein be condemned.

g At the time and place mentioned in the notice published pursuant to subdivision (d) hereof, unless the judge shall adjourn the application to a subsequent day, and in that event, at the time and place to which such application may be adjourned, upon due proof to his satisfaction of the publication and mailing of such notice and upon filing such complaint, the judge shall enter a judgment granting the application, which order shall be filed in the office of the clerk of the superior court. The port authority shall, within 10 days after the entry of such judgment, cause a certified copy thereof to be recorded in the office where instruments affecting real property are required to be recorded, in every county in which any part of the real property affected is situated, in the same manner as deeds are recorded, and the register of deeds or county clerk with whom such certified copy shall be recorded, shall index the same in the same manner as recorded deeds are indexed.

h The port authority, after the filing of the judgment granting the application to condemn, shall cause to be published on 1 day in each of 4 successive weeks in a newspaper published and of general circulation in the county in which the real property to be acquired is located, a notice containing a general description of the real property to be acquired, a statement that such judgment has been filed and requiring that all

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owners of such real property shall, on or before a date specified in the order granting the application, file in the office of the clerk of the superior court, a written claim or demand, duly verified, setting forth the real property owned by the claimant, his post-office address, and the nature of his interest in said real property. The claimant shall within the same time serve on the port authority a copy of such verified claim.

1 Proof of title to the real property to be acquired, where the same is undisputed, together with proof of liens or encumbrances thereon, shall be submitted by the claimant to the port authority. The port authority shall serve upon all parties or their attorneys who have served upon it copies of their verified claims, a notice of the time and place at which it will receive such proof of title. Where the title of the claimant is disputed, such dispute shall not act as a stay of the proceeding to determine the value of the property to be taken, but the proceeding shall continue in the same manner as it would if there were no dispute as to the title, and the award, if any, shall be paid into the superior court by order of a judge of the superior court and shall there be distributed, according to law, on the application of any person interested therein. Written notice given to the owner or owners and to persons interested that such moneys have been so paid into court shall have the same effect as if the moneys so awarded had been actually tendered to the owner or persons entitled thereto. Notice by advertisement in such manner as the judge shall direct shall be deemed sufficient notice.

j After all parties who have filed verified claims, as provided in subdivision (h) hereof, have proved their titles, or have failed to do so after being notified by the port authority of the time and place where such proof of title would be received, the port authority shall apply to a judge of the superior court for leave to bring on before him upon a day to be fixed by said judge a hearing upon the claim so filed, or in case no claims are filed, to fix the amount to be paid for such lands.

In order to advise the said judge, he may appoint 3 commissioners to view said lands, and to advise him what damages, if any, should be assessed for the taking of such lands. The commissioners shall proceed under such directions and rules as shall from time to time be fixed by the said judge to view the lands, to hear such evidence as they may desire, and to fix such sum, if any, that in their judgment will represent the fair value of the lands so taken. The said judge may review such findings and shall not be bound thereby, but may alter or reject such findings in such manner as will, in his judgment, fairly protect the interests of the parties, and such review may be made either with or without further hearing. The commissioners so appointed to advise said judge shall make their report to him within 100 days from

the date of their qualification.

After said judge shall have ascertained and estimated the compensation which should justly be made by the port authority to the respective owners of the real property being acquired, he shall then order that judgment be entered in the amount so determined.

k It shall be the duty of the judge, or the commissioners designated by him, to view the real property to be acquired. Where title to real property being acquired in a proceeding shall have been vested in the port authority, and buildings or improvements situated thereon shall have been removed or destroyed by the port authority or pursuant to its authority prior to the proceeding, and whereby the judge is, or the commissioners are, deprived of a view of the buildings or improvements so removed or destroyed, the fact that the judge has not had, or the commissioners have not had a view thereof, shall not preclude the judge or the commissioners from receiving in the proceeding, testimony and evidence as to the damage sustained by the claimant by reason of the taking thereof, when offered on behalf of either the claimant or the port authority.

l. No evidence shall be admitted in the proceeding, as against an owner of real property being acquired, of an offer made by or on behalf of such owner for the sale of his property or any part thereof to the port authority, or for the sale or assignment of any right and title to the award or awards, or any part thereof, to be made for such property or any part thereof, in the proceeding; nor shall any evidence be received, as against the port authority, of any offer made to such owner, by or on its behalf, for the purchase of such property or any part thereof or for the purchase of the award or awards or any part thereof, to be made for such property, or any part thereof, in the proceeding.

m The port authority shall furnish to the judge such surveys, diagrams, maps, plans and profiles as the judge shall require, to enable the judge to hear and determine the claims of the owners of the real property affected by the proceeding. Such surveys, diagrams, maps, plans and profiles shall distinctly indicate by separate numbers, the names of the claimants to, or of the owners of the respective parcels of real property to be taken in such proceeding, so far as the same are known, and shall also specify in figures with sufficient accuracy the dimensions and bounds of such real property. Where possible, such real property shall be designated on such maps by the same ward or block and lot numbers or other designations as shall be used to designate such real property on the tax books and tax maps of the taxing agency in which it is located. The judge may require the port authority to furnish such other surveys, diagrams, maps, plans and profiles and such other information as shall aid and assist the judge in the proceeding.

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n The port authority, or any party or person affected by the proceeding and aggrieved by the judgment made therein as to awards may institute proceedings in lieu of prerogative writs to review the proceedings in accordance with the rules of civil practice. If the judgment entered in the proceeding to condemn should be reversed upon any subsequent review, such reversal shall not divest the port authority of title to the real property thereby affected.

o All damages awarded by the judge, with interest thereon from the date of the filing of the judgment, or if the title to the real property acquired shall have vested in the port authority prior thereto, from the date of such vesting, shall be paid by the port authority to the respective owners to whom the damages were awarded in the judgment, within 2 calendar months after the entry of the judgment, without further order of the court, or application for such payment by said owners. Property owners appearing in the proceedings shall not be entitled to recover counsel fees, costs, disbursements or allowances. Any outstanding taxes, assessments or other liens shall be deducted from the amount of the award and no interest shall be paid by the port authority upon the sum or sums so deducted. Payment of an award to a person named in the judgment as the owner thereof, if not under legal disability, shall in the absence of notice in writing to the port authority of adverse claims thereto protect the port authority and shall be a full acquittance and release of all claims to said award.

In case there shall be a dispute as to title, or the party entitled to receive the amount assessed by the judge shall refuse upon tender thereof to receive the same, or shall be out of the state or under any legal disability, or in case several parties being interested in the fund shall not agree as to the distribution thereof, or in case the lands or other property taken are encumbered by mortgage, judgment or other lien, or if for any other reason the port authority cannot safely pay the amount awarded to any person, in all such cases, on complaint filed in the superior court, chancery division, to which shall be annexed a copy of the complaint in condemnation and of the findings of the judge or commissioners, if there be any, the amount awarded may be paid into the superior court by order of a judge of the superior court, and shall there be distributed according to law, on the application of any person interested therein. Written notice given to the owner or owners and to persons interested that such moneys have been so paid into court shall have the same effect as if the moneys so awarded had been actually tendered to the owner or persons entitled thereto. Notice by advertisement in such manner as the judge shall direct shall be deemed sufficient notice.

p The port authority may pay to the person entitled to an award for real property acquired

in a proceeding, in advance of the final judgment, a sum to be determined by the port authority, not exceeding 60% of the assessed value of the real property taken less the liens and encumbrances of record thereon, provided, that when the real property taken shall be less than the fee, then such sum shall not exceed 60% of the amount set forth in the petition as the estimated value of such interest, less the liens and encumbrances thereon. If the port authority shall make a partial payment in advance either pursuant to this subsection or pursuant to section 9 hereof, interest on the sum so paid in advance shall cease to run on and after a date 5 days after such person shall have been notified by mail or otherwise that the port authority is ready to pay the same. In case the person entitled to an award at the date of the vesting of title to the real property in the port authority shall have transferred or assigned his claim, such transfer or assignment made by him, or by his successor in interest or legal representative, shall not become binding upon the port authority unless the instrument or instruments evidencing such transfer or assignment shall have been filed in the office of the port authority prior to any such advance payment. When any such advance payment shall have been made, the port authority, on paying the awards for the real property acquired, shall deduct from the total amount allowed as compensation the sum advanced plus interest thereon from the date of the payment of such advance to the date of the final judgment, and the balance shall be paid as hereinbefore provided in subdivision (o) hereof.

q In any proceeding hereunder, in which title to the real property to be acquired shall have become vested in the port authority prior to the entry of final judgment, the port authority shall have power and is hereby authorized to purchase from the owners of such real property at the date of the vesting of title thereto, or their successors in interest or legal representatives, their right and title to the award or awards, or any part thereof, to be made in such proceeding and to take an assignment thereof to the port authority.

r No pledge, sale, transfer or assignment of an award by the person entitled to receive the same by virtue of the judgment or by other order of the judge, shall be valid unless the instrument evidencing such pledge, sale, transfer or assignment shall be acknowledged or proved as instruments are required to be acknowledged or proved for the recording of transfers of real property and shall be filed in the office of the port of New York authority. Every such instrument not so filed shall be void as against any subsequent pledgee or assignee in good faith and for a valuable consideration from the same pledgor or assignor, his heirs, administrators or

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assigns, of the same award or any portion thereof, the assignment of which is first duly filed in the office of the port authority. The port authority shall maintain in its office a record of all pledges or assignments filed with it under the provisions hereof

s The judge at any time may correct any defect or informality in any notice, complaint, pleading, order or judgment in the proceeding, or cause real property affected by such defect, informality or lack of jurisdiction to be excluded therefrom or any other real property affected by such defect, informality or lack of jurisdiction to be included therein by amendment upon 10 days' notice published as provided for the institution of the proceeding and may direct such further notices to be given to any party in interest as it shall deem proper

t The board of commissioners of the port authority by resolution may abandon any proceeding as to the whole or a part of the lands to be acquired in such proceeding, at any time before title to the real property to be thereby acquired shall have vested in the port authority, and may cause new proceedings to be taken for the condemnation of such real property. In case of such abandonment, however, the reasonable actual cash disbursements, necessarily incurred and made in good faith by any party interested, shall be paid by the port authority, after the same shall have been taxed by a judge of the superior court, upon 10 days' notice of such taxation being previously given to the port authority, provided the application to have such disbursements taxed shall be made and presented to the judge within 1 year after the adoption of the resolution of the board discontinuing the proceeding in whole or in part. For the purposes of this section, the fair and reasonable value of the services of an attorney retained by any interested party to represent his interests in said condemnation proceeding, whether on a contingent fee basis or otherwise, if such retainer be made in good faith, shall be deemed to be an actual cash disbursement, necessarily incurred by such interested party and shall be taxable in the same manner as other disbursements. The amounts taxed as disbursements shall be due and payable 30 days after written demand for payment thereof shall have been filed with the port authority

u The title to any piece or parcel of the real property, or any interest therein, authorized to be acquired hereunder shall be vested in the port authority upon the entry of the judgment granting the application to condemn. The port authority, however, may direct that the title shall be vested in the port authority upon a specified date after the date of the entry of the order granting the application to condemn, or upon the date of the filing of the final judgment, but not later than the date of the filing of the

final judgment. Upon the date when title to the real property shall have vested as herein provided, the port authority shall become and be seized in fee of or of an easement in, over, above, through, upon or under such real property or such other interest therein as may have been specified, the same to be held, appropriated, converted and used for the purposes for which the proceeding was instituted. The port authority or any person acting under its authority shall immediately or at any time thereafter take possession of such property without filing a civil action or other judicial proceedings

v Where the whole of any lot or parcel of real property, under lease or other contract, shall be taken, all the covenants, contracts and engagements between landlord and tenant and other contracting parties touching the same or any part thereof, upon the vesting of title in the port authority, shall cease and determine and be absolutely discharged. Where a part only of any lot or parcel of real property so under lease or other contract shall be so taken, all contracts and engagements respecting the same, upon such vesting of title, shall cease and determine and be absolutely discharged as to the part thereof so taken, but shall remain valid and obligatory as to the residue thereof. All tenants in possession of such premises at the time of the vesting of title thereto in the port authority shall become tenants at will of the port authority unless within 10 days after the vesting of title they shall elect to vacate and give up their respective holdings.

32:1-149. Jurisdiction of violations; practice and procedure. Any magistrate of any municipal court, or the commissioner of motor vehicles, or any judge of any criminal judicial district court of any county or any judge of any county traffic court within whose jurisdiction a violation of the rules and regulations specified in subdivision "b" of section 2 in this act is alleged to have occurred, is hereby authorized and empowered in a summary way, to hear and determine the guilt or innocence of such person, and upon conviction may impose upon the person so convicted the penalty herein prescribed

Source P L 1932, c 146, p 263, §3

32:2-12. Deposit of assessed valuation of property with clerk of superior court; payment by clerk. Upon taking actual possession of the real property or any interest therein, the port authority shall deposit with the clerk of the superior court a sum equal to the assessed valuation of the real property or interest therein, which sum shall be paid out by the clerk in accordance with the report of the commissioners fixing the compensation to be paid therefor or in accordance with the provisions of any judgment upon any appeal therefrom

Should said sum be insufficient to permit such payment in full, the port authority shall, within

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20 days after the filing of the report or judgment, pay to the clerk such sum as may be necessary to provide for full payment. Any surplus left in the hands of the clerk after the report or judgment has been filed shall be repaid to the port authority.

Source R S 32 2-12

32:2-13. Payment to clerk when only part of property is taken; effect of payments by clerk. If only a part of or interest in a given parcel of real property is taken and the assessed valuation thereof cannot be readily ascertained, the port authority shall pay to the clerk of the superior court only such sum as in its judgment is sufficient to compensate for the real property or interest to be acquired or condemned.

Any payment made by the clerk as hereinbefore provided shall for all purposes be deemed to have been made by and for the account of the port authority.

Source R S 32 2-13

32:2-14. Repeal

32:9-9. Appeal from report; condemnation laws to govern. At any time within 30 days after the filing of the report by the joint commission, any party aggrieved may review the proceedings in the manner provided by chapter 1 of the title Eminent Domain for the taking of reviews from the award of compensation by commissioners appointed for that purpose.

Except as to the application to a judge of the superior court for the appointment of commissioners as viewers, which is otherwise provided for in this chapter, all proceedings therein shall be conducted in accordance with said chapter 1 of the title Eminent Domain.

32:9-10. Title in fee to property acquired to vest in state. The final compensation awarded, which shall be taken to include all moneys payable for the acquisition of the property and all rights, franchises and easements incident thereto, when paid or tendered to the proper parties in interest, or paid into the superior court, shall vest the title in fee to the property so taken in the state of New Jersey.

32:13A-15. Remedies of bondholders and trustee; receiver. Any holder of any of such bonds, or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by civil action, proceedings in lieu of a prerogative writ or other proceeding, protect and enforce any and all rights granted hereunder or under such resolution or trust indenture, and may enforce and compel performance of all duties required by this chapter, or by such resolution or trust indenture, to be performed by the county or by the commission, or any officer thereof, including the fixing, charging, and collecting of tolls for the use of the tunnel or ferry.

The rights and remedies herein conferred upon or granted to the bondholders shall be in addition to and not in limitation of any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of the bonds, or by any trust indenture securing such bonds. If the bonds shall not be secured by a trust indenture, the holder or holders of 25% or more in principal amount of such bonds at the time outstanding may by instrument or instruments filed in the office of the county clerk of Gloucester or Cape May counties, respectively, and proved or acknowledged in the same manner as a deed to be recorded, appoint a trustee to represent the holders of such bonds. If such appointed trustee, if any, or the trustee under any trust indenture securing the bonds or if either such trustee shall fail or refuse to take action to enforce any of the remedies provided for herein or in such resolution or such trust indenture, after written request by the holder or holders of 15% or more in the principal amount of such bonds at the time outstanding and after tender of reasonable security or indemnification to such trustee, any holder of any such bonds may, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, as the case may be, by civil action, proceedings in lieu of a prerogative writ, or other proceeding, either at law or in equity, protect and enforce any and all rights granted herein or in such resolution or trust indenture, as the case may be, and may enforce and compel performance of all duties required by this act, or by such resolution or trust indenture to be performed by the county or by the commission, or by any officer thereof, including the fixing, charging and collecting of tolls for the use of the tunnel or ferry. In the event that the county or the commission shall default in the payment of the principal or the interest on any of the bonds as the same may become due, whether at maturity or upon call for redemption or in the event that the county or the commission or the officers, agents or employees of the county or of the commission shall fail or refuse to comply with the provisions of this act or shall default in the performance of any covenant, condition, agreement or provision contained in the bonds or in the resolution or trust indenture or in the event that the commission shall contract with a public authority in Pennsylvania relating to the construction, operation or maintenance of the tunnel as hereinabove provided and with a public authority in Delaware relating to the construction, operation or maintenance of the ferry as hereinabove provided, and either the commission or such public authority shall default in the performance of any covenant, condition, agreement or provision contained in such contract, the trustee appointed as hereinabove provided for by the holders of the bonds not secured by a trust indenture, or the trustee

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tee under the trust indenture, if any, or, if either such trustee shall fail or refuse to take action to enforce any of the remedies provided for herein or in such resolution or such trust indenture after written request by the holder or holders of 25% or more of principal amount of such bonds at the time outstanding and after tender of reasonable security or indemnification to such trustee, any holder of any such bonds shall, subject to the provisions of such resolution or trust indenture, have the right to apply in any appropriate judicial proceedings to any court of competent jurisdiction for an appointment of a receiver of the tunnel or of the ferry, whether or not the bonds or any of them have become or have been declared due and payable and whether or not such holder or trustee is seeking to enforce any other right or to exercise any remedy in connection with such bonds. Upon such application the court may appoint a receiver of the tunnel or of the ferry. The receiver so appointed shall have and be entitled to exercise all the rights and powers of the commission or such public authority with respect to the tunnel or ferry and shall have and be entitled to exercise all the appropriate rights and powers of a receiver in equity, including, but without limitation, the right and power forthwith, directly or by its agents and attorneys to enter into and upon and take possession of the tunnel or ferry and its facilities and each and every part thereof and to have, hold, use, operate, manage and control the tunnel or ferry and its facilities and each and every part thereof and receive, collect and disburse the revenues thereof in the name of the commission or otherwise as the receiver may deem best.

Whenever all default shall have been remedied, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the tunnel or ferry to the parties entitled thereto. The same rights to secure the appointment of a receiver shall exist upon any subsequent default as hereinabove provided.

Notwithstanding anything in this section to the contrary, such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character constituting the tunnel, ferry, or any part thereof or necessary for use in connection therewith, but the authority of any such receiver shall be limited to the operation and maintenance of the tunnel or ferry and no court shall have jurisdiction to enter any order or judgment requiring or permitting such receiver to sell, mortgage or otherwise dispose of any such assets.

Source R S 32 13A-15, as am P L 1939, c 84, p 166, §2, P L 1939, c 158, p 503, §2

32:14-13.2. Jurisdiction of prosecutions; procedure. The court or magistrates before whom any proceedings for the recovery of any penalty under section 32.14-13.1 of this title shall be brought and the proceedings and processes by

which such actions shall be enforced shall be those provided for in sections 32 14-22 to 32 14-27 of this title As amended L 1939, c 191, p. 557, §14.

Approved July 11, 1939. Effective July 11, 1939

32:14-22. Municipal court established. There shall be, in that portion of the Palisades interstate park within the state of New Jersey, a municipal court, which shall be known as the "municipal court of the Palisades Interstate park".

Source R S 32 14-22

32:14-23. Jurisdiction of municipal court. The municipal court shall possess and have all the powers and jurisdiction of magistrates of municipal courts in municipalities in this state, with respect to crimes, disorderly conduct and violations of the motor vehicle and traffic or other laws of this state, committed, occurring or happening within the portion of the Palisades interstate park lying within this state. The court shall also have jurisdiction of prosecutions for violations of any of the rules and regulations set forth in section 32 14-13.1 of this title.

Source R S 32 14-23, as am P L 1939, c 191, p 561, §23

32:14-24. Places of holding court. The municipal court may be held in any portion of the Palisades interstate park lying within this state, or in any municipality of the county of Bergen in which any part of the park may lie.

Source R S 32 14-24

32:14-25. Magistrates of police court; appointment; terms; powers. The governor, with the advice and consent of the senate, shall appoint a magistrate or magistrates not exceeding 3, of the municipal court, who shall have all the powers, privileges and duties of magistrates of municipal courts in municipalities of this state, when sitting as a magistrate of such court. The term of such magistrate or magistrates shall be for 3 years, provided, however, that nothing herein shall be construed to extend any shorter term for which any judge or magistrate may already have been appointed.

Source R S 32 14-25, as am P. L 1939, c 191, p 561, §24

32:14-26. Per diem allowance of magistrates. The Palisades interstate park commission may pay the magistrates a per diem compensation not exceeding \$50.00 per day.

Approved July 11, 1939. Effective July 11, 1939

Source R S 32 14-26, as am P L 1939, c 191, p 562, §25

32:16-6. Entry upon lands in advance of condemnation; interest on award from date of entry. When the lands or rights in lands which Palisades interstate park commission seeks to obtain for the parkway cannot be acquired by agreement with the owner thereof, because of a disagreement as to the price to be paid, the legal incapacity or absence of the owner, or his inability to convey valid title thereto, or for any

other cause, the commission may enter upon and take any of such property in advance of making compensation therefor. In any such case, the commission, upon exercising this right and entering upon and taking lands in advance of making compensation therefor, shall proceed without undue delay to condemn the lands so entered upon in the manner prescribed by section 32 16-5 of this title, and, in any such case of entering in advance of making compensation, the award of the commission or the verdict of the jury on appeal from the award shall bear interest from the date of the entry by the commission to the date of the payment of the award to the owner or into the superior court as the case may be.

Source R S 32 16-6, as am L 1939, c 91, p 567, §39

32:19-4. Proceedings to stop or prevent violations; jurisdiction of courts. Whenever the interstate sanitation commission shall be of the opinion that any person, association or corporation, municipal or otherwise within the district is failing or omitting, or about to fail or omit to

do anything required of it by its order or by the laws governing the control or elimination of pollution of the waters of the district, or is doing or is about to do anything or permitting or about to permit anything to be done contrary to or in violation of such orders or such laws or the provisions of the compact, it may direct its legal representative to commence an action or a proceeding in the name of the interstate sanitation commission in an appropriate court having jurisdiction for the purpose of having such violations or threatened violations stopped and prevented either by a civil action or proceedings in lieu of a prerogative writ. Such an action when directed against any person, firm, association, corporation, municipal or otherwise within the state may be brought in a court of competent jurisdiction of this state and the said court shall have and is hereby given the necessary and appropriate jurisdiction to determine such action upon the merits and grant relief as the case may require or that may be appropriate to the action.

Source R S 32 19-4

PROPOSED REVISION

Title 39. MOTOR VEHICLES AND TRAFFIC REGULATION

39:5-1. Enforcement and procedure. The enforcement of this subtitle shall be vested in the commissioner, the inspectors appointed under his authority, and the police or peace officers of, or inspectors duly appointed for that purpose by, any municipality or county or by the state. The enforcement of section 39 4-128 of this title shall also be vested in the board of public utility commissioners, and the inspectors appointed under its authority, and for the purpose of the enforcement of said section 39 4-128, said board of public utility commissioners and its inspectors, are hereby vested with all power, right and authority conferred on any motor vehicle inspector, police or peace officer, or constable by any provision of chapter 5 of this title (section 39 5-1 et seq.).

Source R S 39 5-1, as am L 1938, c 164, p 374, §2, L 1928, c 281, art XV, p 763, §1, as am L 1928, c 299, p 956, §1, rep L 1929, c 348, p 783

39:5-2. Judicial powers of commissioner; holding court; notice to defendants. The commissioner shall have the same powers as are conferred by this subtitle on a magistrate.

In considering violations of this subtitle, the commissioner may hold court in any municipality in the state, upon 5 days' notice given to the defendants summoned to appear before him.

Source R S 39 5-2, as am L 1939, c 216, p 614, §1

Note of Reporter. This section before its amendment by the act of 1939, cited to the text, read as follows:

"The commissioner shall have the same powers as are conferred by this subtitle on a magistrate,

"In considering violations of this subtitle, the commissioner may hold court in any municipality in the state, upon 5 days' notice given to the defendants summoned to appear before him. He may also summon witnesses to appear before him at his office or at any other place he designates, to give testimony in a hearing which he holds looking toward a revocation of a license or registration certificate issued by or under his authority. The summons shall be served at least 5 days before the return date, either by registered mail or personal service. A person who fails to obey the summons shall be subject to a penalty not exceeding \$100, to be recovered with costs in an action at law, prosecuted by the attorney general, and in addition the vehicle registration or driver's license, or both, as the case may be, shall forthwith be revoked. The fees for witnesses required to attend before the commissioner shall be \$1 for each day's attendance and 3 cents for every mile of travel by the nearest generally traveled route in going to and from the place where the attendance of the witness is required. These fees shall be paid when the witness is excused from further attendance, and the disbursements made from payment of the fees shall be audited and paid in the manner provided for expenses of the department."

Section 3 of the amendatory Act of 1939 provided that the act should take effect immediately.

This section before its amendment read as follows: "The enforcement of this subtitle shall be vested in the commissioner, the inspectors appointed under his authority and the police or peace officers of, or inspectors duly appointed for that purpose by, any municipality or county or by the state."

Section 3 of the amendatory Act of 1938 provided that the act should take effect immediately.

39:5-3. Complaints; summons or warrant to issue on complaint; hearing. A complaint, in writing and duly verified having been made to a magistrate, that a person has violated a provision of this subtitle, the magistrate may, within

30 days after the commission of the offense, issue either a summons or warrant directed to a constable, police officer, an inspector of motor vehicles or the commissioner for the appearance or arrest of the person so charged. The complaint and process shall state what section or provisions of this subtitle has been violated by the defendant, and the time, place and nature of the violation. Upon return of the summons or warrant or at the time to which the hearing has been adjourned as hereinafter authorized, the magistrate, or the person who sits for him, shall proceed summarily to hear and determine the innocence or guilt of the defendant, and, upon conviction, may impose the penalty prescribed by this subtitle, together with the costs of prosecution for the offense. A complaint may be made to a magistrate for a violation of sections 39 3-12, 39 3-34, 39 3-37, 39 4-129 or 39 10-24 of this title at any time within 1 year after the commission of the offense.

All complaints shall be made before a magistrate of the municipality in which it is alleged that the violation occurred but in the event there shall be no magistrate or should no magistrate in such municipality be available for the acceptance of bail and disposition of the case, or should the magistrates in such municipality be disqualified because of personal interest in the proceedings, or for any other legal cause, said complaint shall be made to a magistrate in the next nearest municipality to the one in which it is alleged such a violation occurred, except in those counties where a county traffic court has been created or may be created. In such case, complaints may be made before the magistrate of the municipality in which the violation occurred or in the county traffic court, which court shall have concurrent jurisdiction.

Source R S 39 5-3, as am L 1940, c 212, p 874, §1, L 1942, c 334, p 1178, §1

39:5-4. Summons in case of corporations; service. The magistrate, upon receiving complaint, in writing and duly verified, of the violation of a provision of this subtitle by a corporation, shall issue a summons directed to a constable, police officer, inspector of motor vehicles or the commissioner, requiring the corporation to be and appear before the magistrate on a day named therein to answer the complaint. The summons shall be served on any officer of the corporation, its registered agent or the person in charge of its place of business in this state, at least 5 days before the time of appearance mentioned therein. If a corporation fails to enter an appearance in response to the summons the magistrate shall hear the evidence offered in support of the complaint and enter judgment thereon. Except where a different procedure is provided by this subtitle, proceedings shall be the same as against individuals.

Source R S 39 5-4

39:5-5. Entitling proceedings; bond to secure costs. All proceedings for the violation of this

subtitle shall be entitled and run in the name of the state, with the commissioner, a motor vehicle inspector, police officer, peace officer, constable or any other person who by complaint institutes the proceedings as prosecutor. A magistrate may, at his discretion, refuse to issue a warrant on the complaint of a person other than the commissioner, a motor vehicle inspector or a police officer, until a sufficient bond to secure costs has been executed and delivered to the magistrate.

Source R S 39 5-5

39:5-6. Performance of ministerial acts. All acts, whether in connection with the taking of complaints, issuing of process, return thereof, taking of bail for appearance and all proceedings preliminary to trial, including the arraignment, taking of plea and postponement of trial and all ministerial acts and proceedings subsequent to trial, may be performed by the clerk or deputy clerk of a magistrate, and the jurisdiction so to do with respect to a violation of this subtitle is hereby conferred.

Source R S 39 5-6

39:5-7. Suspension of sentence; probation. In any proceeding instituted pursuant to the provisions of this subtitle, except where a mandatory penalty is fixed herein, the magistrate may, after conviction or after a plea of guilty or non vult, suspend the imposition or execution of sentence, and may also place the defendant on probation under the supervision of the chief probation officer of the county for a period of not less than 6 months nor more than 1 year. The probation shall be effected and administered pursuant to the provisions of sections 2 199-1 to 2 199-12 of the title Administration of Civil and Criminal Justice.

Source R S 39 5-7

39:5-8. Adjournment of hearing; bond or cash deposit; vacancy in office of magistrate. A hearing to be held pursuant to this subtitle shall, on the request of either party, or in the discretion of the magistrate, be adjourned for a period not exceeding 30 days from the return day named in a summons or warrant or from the date of an arrest without warrant, as the case may be. In such case the magistrate shall detain the defendant in safe custody, unless he makes a cash deposit or enters into a bond to the state, with at least 1 sufficient surety, or himself qualifies and justifies in real estate security situate in this state in twice the amount fixed by the magistrate for the bond with a surety, to or in an amount not exceeding \$500 00, conditioned for his appearance on the day to which the hearing may be adjourned, or until the case is disposed of.

In the event of a vacancy in the office of the magistrate, the county judge, on application, shall specially designate a magistrate in the county to hold said hearing and within the time so limited may, in his discretion, adjourn the hearing for a

period not exceeding 45 days from the return date named in a summons or warrant or from the date of arrest without warrant, as the case may be

Source R S 39 5-8, as am L 1950, c 289, p , §1

39:5-9. Forfeiture of bond or cash deposit; disposition of moneys. The bond referred to in section 39 5-8 of this title, if forfeited, may be prosecuted by the commissioner in any court of competent jurisdiction, and the cash deposit, if forfeited, shall be paid to the commissioner by the magistrate with whom it was deposited, provided, that such forfeiture is the result of a complaint instituted by the commissioner, or a member of his staff, or of the state police, or an inspector of the public utility commission, or a law enforcement officer of any other state agency. The commissioner shall dispose of the said forfeiture in the manner provided by section 39-5-46 of this title. Forfeitures imposed and collected as a result of a complaint instituted by a local officer shall be by the magistrate forwarded to the proper financial officer of the county, wherein they were collected, to be used by the county as a fund for road repairs therein

Source R S 39 5-9, as am L 1942, c 334, p 1179, §2

39:5-10. Certain objections to be made before trial only. An objection to the jurisdiction of the magistrate or to the validity or regularity of the complaint or process issued thereunder must be made by the defendant before trial

Source R S 39 5-10

39:5-11. Appeal to court of special sessions; nature thereof; trial de novo; amendments; substitution of new charges. The defendant in any proceeding instituted under this subtitle may appeal from the judgment or sentence of the magistrate or other tribunal against him to the court of special sessions of the county in which the proceeding shall have taken place. An appeal to the court of special sessions under authority of this section shall not operate to bring up for review the proceedings in the tribunal from whose judgment or sentence the appeal is taken, but shall operate as an application for a trial de novo in the court of special sessions, and as a consent that the court of special sessions may, during or before the trial in that court, amend the complaint, by making the charge more specific, definite or certain, or in any other manner, including the substitution of any charge growing out of the act or acts complained of or the surrounding circumstances, of which the tribunal from whose judgment or sentence the appeal is taken had jurisdiction

If, by any such amendment, a new or different charge is made, any provision of law limiting the time within which any such charge may be brought, or proceedings taken in the prosecution thereof, shall not operate and shall be considered as being waived by the appeal; and, where a new or different charge is made, the court of special sessions shall give the defendant

appellant an opportunity to plead thereto and a reasonable time, in its discretion, in which to prepare for and proceed with the trial in the court of special sessions.

Source R S 39 5-11

39:5-12. Bond or cash deposit by defendant appealing. Defendant appealing to the court of special sessions shall, within 10 days after the date of the judgment against him, deliver to the magistrate a bond to the state, with at least 1 sufficient surety, or deposit with the magistrate cash in such amount as the magistrate shall direct, not exceeding \$500 00, unless defendant can himself qualify in real estate in this state in twice such amount. The bond shall be conditioned to stand and abide such further order or judgment as may be thereafter made against defendant

Source R S 39 5-12

39:5-13. Imprisonment of defendant not appealing. If the magistrate has imposed a sentence of imprisonment, the defendant, if he does not duly appeal as herein provided, shall be imprisoned forthwith upon the imposition of the sentence against him

Source R S 39 5-13

39:5-14. Appeal as stay of sentence and judgment. An appeal, properly taken in accordance with the provisions of this chapter shall be a stay of the sentence of imprisonment, whether or not the execution of the sentence has been entered upon, and also of any other judgment which may have been pronounced

Source R S 39 5-14

39:5-15. Time for completion of appeal; stay pending completion; failure to complete appeal within time limited. If the defendant, after the rendition of the sentence or judgment against him, announces to the magistrate his intention to appeal therefrom, and gives the bond or makes the cash deposit required by section 39 5-12 of this title, he shall have 10 days from the date of the rendition of the sentence or judgment within which to complete his appeal, during which 10 days the execution of whatever sentence or judgment has been rendered against him, whether of imprisonment or fine, shall be stayed. If, however, the defendant fails to complete his appeal within the 10 days allowed him, the magistrate shall summon the defendant to appear before him for the execution of the sentence theretofore imposed upon him by the magistrate and if the defendant fails to appear in answer to said summons, the magistrate may forfeit the bond

Source R S 39 5-15, as am L 1942, c 334, p 1179, §3

39:5-16. Written notice of appeal; service on prosecutor of pleas, magistrate and attorney general. A defendant appealing to the court of special sessions as herein provided shall, within 10 days from the rendition of judgment against him, serve upon the prosecutor of the pleas of the

county wherein the offense was committed, and upon the magistrate imposing the sentence or the magistrate's clerk or deputy clerk, a written notice of appeal, and, where the complaint is made by a motor vehicle inspector or a member of the state police, the notice of appeal shall, instead of being served on the prosecutor of the pleas, be served within the same time, on the attorney general, either personally or by registered mail
Source. R S 39 5-16

39:5-17. Recognizance or cash deposit transmitted to county clerk; notice to prosecutor of pleas or attorney general of service of notice of appeal and filing of bond. The recognizance taken pursuant to section 39 5-12 of this title shall, by the magistrate or his clerk, after the service of the notice of appeal, be duly recorded in the office of, or the cash deposited pursuant to said section 39 5-12 be turned over to the clerk of the county, and the magistrate shall promptly notify the prosecutor of the pleas or the attorney general, as the case may be, of the service of the notice of the appeal upon such magistrate and filing of the bond with such magistrate.

Source R S 39 5-17, as am L 1942, c 334, p 1180, §4

39:5-18. Papers, money and transcript transmitted to court of special sessions. When an appeal is taken to the court of special sessions as herein provided, the magistrate shall, within 10 days after the defendant has completed his appeal, send to the court of special sessions all papers, together with a transcript of the proceedings in the case

Source R S 39 5-18

39:5-19. Appeal noticed for hearing; service of notice thereof on prosecutor of pleas or attorney general; failure to serve. The trial on appeal shall be noticed for hearing by the defendant for a day not more than 30 days after he has completed his appeal, and, if the court of special sessions is not in session, for a day as soon thereafter as such court will fix to hear the appeal; and the defendant shall, not more than 10 days after completing his appeal, serve upon the prosecutor of the pleas of the county wherein the alleged violation was committed a 5 days' written notice of the day set for the hearing of the appeal. If the complaint is made by a motor vehicle inspector or a member of the state police, the 5 days' written notice shall, within the same period of time, be served by defendant upon the attorney general, either personally or by registered mail. If the defendant fails to give the required notice of trial on appeal, the like proceedings may be had as would, by the provisions of this chapter, follow an appeal taken and a judgment of affirmance thereon.

Source R. S 39 5-19

39:5-20. Complainant represented on trial on appeal by prosecutor of pleas or attorney general. At the trial on appeal the prosecutor of the pleas of the county wherein the alleged vio-

lation was committed shall represent the complainant, except where the complaint is made by a motor vehicle inspector or a member of the state police, in which case the attorney general shall represent the complainant. The prosecutor of the pleas of any county, charged with the enforcement of this subtitle, may request the attorney general to attend personally, or by such assistant or assistants as he shall designate, to aid in the prosecution of the appeal.

Source R S 39 5-20

39:5-21. Trial on appeal de novo; summary trial and determination; conviction or acquittal in court of special sessions. The court of special sessions shall, de novo and in a summary manner, try and determine all appeals and charges preferred pursuant to section 39 5-11 of this title. If defendant is convicted in the court of special sessions, such conviction shall supersede and nullify the conviction and judgment in the court below, and the court of special sessions shall impose the penalty prescribed by this subtitle and the costs of the appeal. If defendant is acquitted in the court of special sessions, that court shall order the conviction and judgment below set aside, and shall order the return of all money deposited and all costs of prosecution paid by the defendant.

Source R S 39 5-21, as am L 1942, c 334, p 1180, §5

39:5-22. Revoked license not restored by appeal. An appeal taken to the court of special sessions as herein provided shall not operate to restore, during the pendency of the appeal, a license revoked for a violation of section 39 4-50 of this title.

Source R S 39 5-22

39:5-23. Review of conviction, sentence and judgment by supreme court justice. Any justice of the supreme court, upon application made to him by a verified petition for that purpose by any person against whom a sentence or judgment for the violation of any of the provisions of this subtitle has been rendered and who desires to have the legality of his conviction reviewed or the reasonableness of the sentence or penalty imposed, may order the complaint, process, proceedings, evidence and record of conviction to be forthwith brought before him, so that the legality of such proceedings and sentence or judgment or the reasonableness of the sentence or penalty may be summarily reviewed and determined. If the proceedings and sentence are thereupon found to be illegal, or the sentence or penalty to be unreasonable, the justice shall forthwith set aside the same and order the remission or reduction of any fine and costs that may have been imposed, or the discharge of the offender from custody.

Source R S 39 5-23

39:5-24. Proceedings on Sunday. Proceedings under this subtitle may be instituted on any day of the week, and the institution of the proceedings on Sunday shall be no bar to the successful

prosecution thereof. Any process served on Sunday shall be as valid as if served on any other day of the week.

Source R S 39 5-24

39:5-25. Arrest without warrant; detention of offender; summons instead of arrest. Any constable, police officer, peace officer, motor vehicle inspector or the commissioner may, without a warrant, arrest any person violating in his presence any provision of chapter 3 of this title (39 3-1 et seq), or any person, other than a motorman or person having control of a street car or autobus, running upon a route approved by the board of public utility commissioners, violating in his presence any provision of chapter 4 of this title (39 4-1 et seq) The exemption from arrest of a motorman or person having control of a street car or autobus, as conferred herein, shall not operate to prevent his arrest, however, for a violation of section 39 4-50 of this title The arresting officer shall bring any person so arrested before any magistrate of the county wherein the offense is committed, or before the commissioner at any place designated as his office If the arrest is for a violation of section 39 4-50 of this title, the arresting officer may, if no magistrate, clerk or deputy clerk is available, detain the person arrested either in any police station, lockup or other place maintained by any municipality for the detention of offenders or in the common jail of the county, for such reasonable time as will permit the arresting officer to obtain a warrant for the offender's further detention, which temporary detention shall not exceed 24 hours from the time of the arrest If the arrest is for a violation of any other provision of this subtitle, the person arrested shall be detained in the police station or office of the magistrate until the arresting officer makes a complaint, under oath or affirmation, declaring that the person under arrest has violated 1 or more of the provisions of this subtitle, and specifying the provision or provisions violated, and thereupon the magistrate shall issue a warrant and proceed to hear or postpone the case as provided in this chapter

Any constable, police officer, motor vehicle inspector or the commissioner may, instead of arresting an offender as herein provided, serve upon him a summons, in the name of any police court, recorder's court or other court of competent jurisdiction in the county or municipality wherein such officer is authorized to discharge his duties, directing the person so summoned to appear and answer such charges as may be preferred against him, for which purpose the county

or municipal clerks, respectively, shall provide such officers with a form of summons, which, when filled out, executed and issued by any such officer, shall be good and effectual according to the purpose and intent thereof

Source R S 39 5-25, as am L 1940, c 139, p 303, §1

39:5-26. Verification of complaint. In a prosecution instituted under this subtitle the complaint filed therein, if made by a constable, police officer, motor vehicle inspector or the commissioner, will be considered duly verified if made under his oath or affirmation, which oath or affirmation may be made by the official upon information and belief.

Source R S 39 5-26

39:5-27. License exhibited to magistrate upon arrest. Any driver arrested for a violation of any provision of this subtitle shall, on demand of the magistrate hearing the complaint against him, produce his license for inspection If he fails to produce his license or to give satisfactory excuse for its nonproduction, he shall, in addition to any other penalties imposed by the magistrate, be subject to a fine of not more than \$25.00

Source R S 39 5-27

39:5-28. Validity, service and effect of summons or warrant and arrest thereon in county other than where issued. A summons or warrant issued by a magistrate under this chapter shall be valid throughout the state An officer who may serve the summons or warrant and make arrest on the warrant in the county in which it was issued, may also serve the summons or warrant and make arrest on the warrant in any county of the state

If a person is arrested for a violation committed in a county other than that in which the arrest takes place he may demand to be taken before a magistrate of the county in which the arrest is made for the purpose of making a cash deposit or entering into a recognizance with sufficient surety The officer serving the warrant shall thereupon take the person so apprehended before a magistrate of the county in which the arrest has been made, who shall thereupon fix a day for the matter to be heard before the magistrate issuing the warrant, and shall take from the person apprehended a cash deposit or recognizance to the state, with sufficient surety, for his appearance at the time and place designated in accordance with this chapter The cash deposit or recognizance so taken shall be returned to the magistrate issuing the warrant to be retained and disposed of by him as provided by this chapter.

Source R S 39 5-28

PROPOSED REVISION

Title 40. MUNICIPALITIES AND COUNTIES

40:4-10. Annual licenses; fees. The license fee for the registration of each accountant who shall apply for a license to practice as a municipal accountant for New Jersey as herein described shall be \$5. Licenses shall be issued annually thereafter and the same fee imposed for each annual registration or renewal. All registration licenses shall date from June 1st preceding the date of application.

40:6-1. Application to superior court judge; procedure. If 25 freeholders in any municipality or county shall present to any superior court judge an affidavit, sworn to and subscribed by them, setting forth that they are freeholders and have paid taxes on real estate within 1 year, and that they have cause to believe that the moneys of such municipality or county, are being, or have been unlawfully or corruptly expended, or, if the board of chosen freeholders of any county, or the legislative body of such municipality, by resolution, shall request such judge to investigate the affairs of the municipality or county making such request, such judge may, in his discretion, make a summary investigation into the affairs of such county or municipality. He may, at his discretion, appoint experts to prosecute such investigation, and may cause the results thereof to be published in such manner as he may deem proper.

The officers and the legislative body of any such county or municipality shall obey any orders of such judge for facilitating the investigation, and any refusal or failure to obey such orders may be punished by the judge as for contempt.

The costs incurred under this section shall be taxed by the judge, and upon his order be paid by the disbursing officers of the county or municipality whose expenditures may have been investigated.

If the judge proceeds upon the application of 25 freeholders, at least 10 days' notice of the hearing thereon shall be given to the disbursing officer and the legislative body of the municipality or county.

40:6-2. Judge may require applicants to give bond for costs. The judge may, if he deems it advisable, require the applicants to furnish a bond to be filed with the county clerk in such sum as he may deem necessary for the payment of the costs and expenditures of the investigation.

40:6-3. Judge may order subpoena or subpoena duces tecum to issue; perjury. Whenever any judge of the superior court may have ordered,

or shall hereafter order a summary investigation into the affairs of any municipality or county, pursuant to the power and authority conferred upon him by section 40 6-1 of this title, he may, in his discretion, make order awarding process of subpoena, or subpoena duces tecum, out of the superior court for any witness or witnesses within this state whose attendance upon the investigation may be considered necessary or advisable by him, or by such attorney as may have been designated by the judge to conduct such investigation, or to prepare and present the evidence on the part of the applying freeholders.

Upon filing such order in the clerk's office of the superior court, the clerk, under the seal of the court, shall issue process of subpoena for such witness or witnesses, to appear before such judge, or before such person as may have been or shall be designated by such judge, at a time and place named therein, and so from day to day until the examination of such person shall be completed, in the same manner and with like procedure and effect as in actions in the superior court. The subpoena may contain a direction that such witness bring with him to such examination any books, papers or documents therein mentioned.

The clerk of the superior court shall issue under the seal of said court such other or further order in reference to the examination, appearance, production of books, papers or documents upon such examination as said judge shall direct.

If any person so subpoenaed, not being the husband or wife of the person under investigation, shall refuse to obey such subpoena or any direction therein, or to give testimony, or to answer questions as required, or to produce any books, papers or documents as required, or if any such person shall refuse to obey any order made by such judge, such judge may, upon satisfactory proof of such refusal, issue an attachment directed to the sheriff of the county, or to any constable or police officer of such municipality, for the arrest of such person, and upon his being brought before him, may proceed to a hearing of the case. Such judge shall have power to enforce, by imprisonment in the county jail, obedience to such subpoena, and the answering of any question that may be proper, and the production of any book, paper or document that the witness would be compelled to produce in a court of law, and also to compel such witnesses to pay the costs of the proceeding, to be taxed by such judge.

Any person who shall willfully and corruptly

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testify falsely to any material matter, upon oath or affirmation administered by the judge or the person designated by him, upon the investigation, shall be guilty of perjury

40:6-6. Report of investigators filed; time for. Whenever an investigation shall have been had pursuant to sections 40 6-1 to 40 6-4 of this title, the expert or experts appointed by the judge of the superior court to prosecute such investigation shall file the results or report of the investigation in the office of the clerk of the superior court within 10 days after the making or finding thereof

40:11-1. Qualifications of county and municipal officers; residence; office not transferable; penalty. Except as otherwise provided by law, every person holding an office, the authority and duties of which relate to a county only, shall reside within the county, and every person holding an office, the authority and duties of which relate to a municipality, shall reside within the municipality

If any person holding any such office shall at any time attempt to let, farm out or transfer such office, or any part thereof, to another, he shall forfeit the sum of \$1500, to be recovered with costs by any person who shall sue therefor, one-half to the prosecutor, and the other half to the treasurer, for the use of the state

No person shall be appointed to, or hold any office in any county or municipality, who has not the requisite qualifications for personally performing the duties of such office in cases where scientific engineering skill is necessary to the performance of the duties thereof

Any person holding or attempting to hold any office in violation of this section, shall be considered as illegally holding or attempting to hold it, and the superior court may give judgment of ouster against him, in accordance with the rules of such court, in a civil action instituted for such purpose by any officer of the county or municipality respectively of which the offending official is also an officer

Nothing in this section shall require any county prosecutor to reside within any of the counties wherein nonresident prosecutors may lawfully be appointed

40:14A-17. Series of bonds; default; trustee for holders.

a The provisions of this section shall be applicable to a series of bonds authorized or issued under this act only if the bond resolution of the sewerage authority authorizing or providing for the issuance of such bonds shall provide in substance that the holders of the bonds of such series shall be entitled to the benefits, and be subject to the provisions, of this section

b In the event that there shall be a default in the payment of principal of or interest on any bonds of such series after the same shall become due, whether at maturity or upon call for redemp-

tion, and such default shall continue for a period of 30 days, or in the event that the sewerage authority shall fail or refuse to comply with the provisions of this act or shall fail or refuse to carry out and perform the terms of any contract with the holders of any of such bonds, and such failure or refusal shall continue for a period of 30 days after written notice to the sewerage authority of its existence and nature, the holders of 25% in aggregate principal amount of the bonds of such series then outstanding, by instrument or instruments filed in the office of the secretary of state and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds of such series for the purposes provided in this section.

c Such trustee may and upon written request of the holders of 25% in aggregate principal amount of the bonds of such series then outstanding shall, in his or its own name

1 By civil action, enforce all rights of the holders of such bonds, including the right to require the sewerage authority to charge and collect service charges adequate to carry out any contract as to, or pledge of, system revenues, and to require the sewerage authority to carry out and perform the terms of any contract with the holders of such bonds or its duties under this act;

2 Bring civil action upon all or any part of such bonds or interest coupons or claims appurtenant thereto;

3 By civil action require the sewerage authority to account as if it were the trustee of an express trust for the holders of such bonds,

4 By civil action enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds, or

5 Declare all such bonds due and payable, whether or not in advance of maturity, upon 30 days' prior notice in writing to the sewerage authority and, if all defaults shall be made good, then with the consent of the holders of 25% of the principal amount of such bonds then outstanding, annul such declaration and its consequences

d Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of the functions specifically set forth herein or incident to the general representation of the holders of bonds of such series in the enforcement and protection of their rights

e In any action or proceeding by such trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, appointed pursuant to this act, shall constitute taxable costs and disbursements, and all costs and disbursements, allowed by the court, shall be a first charge upon any service charges and system revenues of the sewerage authority pledged for the payment or

security of bonds of such series. L. 1946, c. 138, p 659, §17

40:18-6. Commissioners; application for appointment. Where the division lines between counties have not been actually surveyed, ascertained and distinctly marked in whole or in part, or where a dispute shall arise respecting the same, the board of chosen freeholders of either county, on 30 days' notice in writing, signed by the director of the board, to the director of the board of chosen freeholders of the other county, may make application to the superior court for the appointment of commissioners to survey, ascertain and mark the boundaries

40:18-7. Superior court to appoint commissioners. Upon such application the superior court shall appoint 3 commissioners, not inhabitants of either county, to run, survey, ascertain and mark the line or lines of division, or any part thereof in conformity with the laws creating such counties, or describing their boundaries.

40:18-9. Commissioners; vacancies. If any commissioner shall die, refuse to serve, or resign, the superior court shall appoint another in his place

40:18-14. Commissioners; application for appointment. When the board of chosen freeholders of a county shall deem it necessary to ascertain the division line, or any part thereof, between any municipalities in the county, it may apply to the county court of the county, on 30 days' notice in writing, signed by the director of the board, to the governing body of each of the municipalities involved, for the appointment of commissioners to survey, ascertain and mark the boundaries

40:18-17. Commissioners; vacancies. If any commissioner shall die, refuse to serve, or resign, such court shall appoint another in his place

40:18-19. Surveys; record of. The commissioners, or any 2 of them, shall cause the line, or such part of it as shall be specified in or become necessary by their appointment, to be run, surveyed, ascertained and marked in conformity, as near as may be, to the charters, settlements and laws relative thereto

The survey, certified under their hands, or the hands of any 2 of them, shall be annexed to their commission or appointment and oath of office, and delivered to the clerk of the county court for recording and filing

40:18-20. Lines surveyed declared boundaries; expense. The line so surveyed, ascertained, marked and certified shall be the boundary, or line of division between those municipalities and all charges and expenses attending the same shall be taxed by the county court and paid by the municipalities, equally

40:18-32. Suits and other legal proceedings unaffected. All actions, suits, appeals, prosecutions and other legal proceedings pending in a court or before any tribunal having jurisdiction within the county from which the annexed territory is taken shall not be affected by the annexation, but may be prosecuted in the county from which the territory is taken in the same manner and before the same courts and tribunals as if the annexation had not occurred.

In all actions and proceedings pending in the superior court where the defendant in any transaction shall, at the time the annexation takes effect, reside within the territory annexed, or in any local action where the cause of action arose in the territory annexed, either party may, at his election, on application to the court for that purpose, have the venue changed to the county to which the territory is annexed, and the same shall be tried or continued therein as if it had originally been commenced in the county to which the territory shall have been annexed.

All judgments obtained, or which may be obtained in such actions, suits or proceedings in the superior court or in any court in the county from which the territory is taken, shall have the same effect within the annexed territory as if the annexation had not occurred, and all writs of execution and other legal process may be issued thereon and directed to the sheriff or other appropriate official of the county from which the territory was taken. Such official is hereby authorized and directed to execute the same, and upon any such judgment legal proceedings may issue or be had and taken as if the annexation had not taken place.

40:19-8. Courts and county officers established in new county seat. After the acquisition and furnishing of such buildings, the courts of the county and all the county officers shall be established therein

All writs and process, recognizances and other proceedings of said courts, which are by law required to be returned at any term thereof, shall be returned at and in conformity with the place selected under the provisions of this chapter
Source L 1918, c 185, p 580, §607 [1924 Suppl §48-607]

40:20-10. County court judge to resolve doubts on right to vote. If any voter is not entitled or doubts his right to vote under sections 40 20-2 to 40 20-19 of this title on presidential primary day, he may apply to a judge of the county court for a certificate entitling him to vote

The judge shall hear the matter in a summary manner and if he finds that the applicant is a legal voter of the county, he shall issue a certificate under his hand, addressed to the board of registry and election of the election district in which the voter resides, directing it to permit the applicant to vote hereunder

The certificate shall be returned by the board with its other returns

40:20-83. Judge of superior court may order subpoena; penalty. A judge of the superior court, on application made to him by the director of the board, may make an order awarding process of subpoena out of that court for persons wanted as witnesses before the committee to appear and testify before it, and upon filing the order in the office of the clerk of the court the clerk shall issue process of subpoena, under the seal of the court, requiring the witness to appear and testify before the committee. The subpoena shall be served in the manner and be of the same effect as other like process issued out of that court.

Any person attending in pursuance of the subpoena shall be entitled to the same fees as witnesses in other cases, and in case of disobedience of such process, or refusal to testify or be sworn, shall be subject to the same penalties, including punishment as for contempt of court, as in cases pending in that court.

40:21-12. Condition of bond broken; action by taxpayer. Upon application in writing to the county court by a citizen and taxpayer thereof, alleging that the condition of the bond of an officer, member of committee or employee of the county has been broken, the court shall make such investigation regarding the truth of the allegations as it shall think proper, and in its discretion may order an action to be brought upon the bond in the name of the county or otherwise, for the benefit of the county.

40:21-28. Vacancy; coroners to act. If the office of county physician is vacant or unfilled for any reason the coroners in the county shall perform the duties and exercise the powers of his office.

40:21-30.11. Disinterment of bodies upon court order. In any county having a chief medical examiner, the superior court judge or the county court may, upon application and without notice, order the disinterment of any body under the direction and supervision of the chief medical examiner, and authorize the removal by the chief medical examiner of the body to the public morgue for the purpose of examination or autopsy.

40:21-32. Designation of morgues by county courts in certain counties. The county courts of the several counties, except in counties of the first class having a chief medical examiner and in counties of the second, third and fifth classes having morgue keepers appointed by the board of chosen freeholders, may designate not more than 4 places of proper character and furnished with sufficient accommodations and appliances, as a county public morgue or morgues. In designating such place or places the court shall first select the city or cities within the county, and afterwards such other place or places as may be necessary.

This section shall apply only to counties having within their limits a city or cities of more than 4,000 inhabitants.

40:21-33. Morgue keepers appointed by county court in certain counties. The county court may appoint a keeper or keepers for the morgue or morgues designated as provided in section 40 21-32 of this title for a term of 3 years from the date of their appointment, and define their respective districts. Such keepers shall be required to take in charge the unknown dead in their respective districts, to furnish, free of charge, suitable rooms for the holding of all inquests when necessary, and to make such disposal of the bodies as the proper authorities may direct.

The county court, at any time in its discretion, may remove such morgue keeper or keepers and appoint a keeper or keepers for the term specified in this section in the place of the keeper or keepers so removed.

40:21-52. Subpoenas for attendance of witnesses. In connection with the powers provided for in section 40 21-51 of this title the county supervisor shall have power to compel the attendance of witnesses and the production of books and records in the county pertinent to such investigations. The fees for witnesses for attendance and travel shall be the same as for witnesses before the county court, and shall be paid in the same manner as fees for witnesses before that court. Any disobedience to or neglect of any subpoena issued by the county supervisor, or any refusal to testify, shall be certified in writing by him to the county court of the county.

40:21-71. Disinterment of bodies upon court order. In any county having a chief medical examiner, the superior court or the county court may, upon application and without notice, order the disinterment of any body under the direction and supervision of the chief medical examiner, and authorize the removal by the chief medical examiner of the body to the public morgue for the purpose of examination or autopsy.

40:24-4. Magistrate to issue process; arrest; trials. Every municipal court of the proper county shall issue, on information or on its own view, its warrant or process to apprehend any person violating any such resolution of the board of chosen freeholders, and the method of arrest and trial shall be the same as is provided by law for the arrest and trial of disorderly persons.

40:24-5. Who may serve warrant or other process. Any constable or police officer may serve any warrant or other process issuing out of any municipal court, to apprehend any person for the violation of any such resolution.

Source L 1918, c 185, p 621, §1713, as am L 1919, c 159, p 346, §2 [1924 Suppl §48-1713]

40:24-6. Arrest without warrant. Every police

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officer shall, and any other person may, apprehend without warrant or other process any person violating in his presence or view any of the provisions of any such resolution, and shall take the offender before a municipal court located in the county where apprehended

Source L 1918, c 185, p 621, §1713, as am L 1919, c 159, p 346, §2 [1924 Suppl §48-1713]

40:24-7. Conviction; penalty; imprisonment on default of fine. The municipal court before whom any violator of any such resolution is convicted may impose any fine or term of imprisonment not exceeding the maximum fixed in the resolution. In default of the payment of the fine imposed thereunder, a person convicted of a violation of any such resolution may, in the discretion of the municipal court by whom he was convicted, be imprisoned in the county jail for a term not exceeding 90 days

40:24-9. Municipal court defined; jurisdiction. The word municipal court as used in this chapter means and includes municipal courts and all other officers having the powers of a committing magistrate, and jurisdiction for the purpose mentioned herein is hereby conferred upon them respectively

40:25-19. Board of review upon classification; membership. There is hereby established a board of review upon classification and reclassification of bidders. This board shall consist of the county official concerned, or 1 member of any board, commission, committee, department or other branch of the county government concerned, such member to be designated by the board, commission, committee, department or other branch of the county government concerned, a judge of the county court of the county and a citizen thereof to be designated by the assigned judge of superior court presiding in the county. In all counties having a county supervisor, he shall be a member of the board of review instead of the citizen. The county clerk shall be the secretary of the board of review and shall keep a complete record of proceedings and decisions before it. The members of the board shall serve without compensation

Source L 1931, c 376, p 977, §4

40:26A-5. Proceeding. Thereafter and when so directed by the board of chosen freeholders, the county counsel of the county shall institute a civil action, in the superior court, by filing a complaint containing the information contained in such lists and praying that the several county officers of the county having custody or control of such unclaimed moneys be ordered to pay the amounts thereof to the treasurer of the county for the use of the county in accordance with the provisions of this act. L 1948, c. 456, p 1877, §5

40:26A-6. Order to show cause. Upon the filing of said complaint the court shall make an order, requiring all persons having any interest

in such unclaimed moneys, to show cause why they should not be paid to the treasurer of the county for the use of the county in accordance with the provisions of this act, by making proof of a valid claim to any of them, at such time and place as said court shall, by said order, direct

Note of Reporter. This is probably obsolete as it is definitely procedural

40:26A-7. Posting of order to show cause. Such order to show cause shall be served by posting a copy thereof, together with a copy of said complaint, certified to be true copies by such county counsel, at least 30 days before the day fixed for the hearing of such order, in each of the following places: the office of the clerk of the court in which the proceedings are instituted, the offices of the county clerk, the sheriff and the surrogate of the county, and the office of each other county officer having custody or control of any item of such unclaimed moneys

Such posting shall be deemed to be notice to all interested persons and proof of such posting shall be made by affidavit of the person posting the same and shall be filed in the office of the clerk of the court

40:26A-8. Hearing on claims; order. On the return day of such order to show cause or upon any day to which the same may be adjourned, the court shall hear all persons making claim to any of said unclaimed moneys and determine the validity of said claims and if it shall be determined that any such claimant is entitled to any such unclaimed moneys the court shall order payment thereof to be made to the claimant and the court, upon being satisfied that any of the unclaimed moneys described in the petition have remained uncalled for or unclaimed for a period of 10 years, shall order such unclaimed moneys paid to the county treasurer of the county for the use of the county, in accordance with the provisions of this act and thereupon it shall be the duty of such county officers to make payment thereof to the county treasurer as provided in such order. L. 1948, c. 456, p 1878, §8.

40:26A-9. Claims to unclaimed moneys paid to county treasurer; procedure. At any time after any unclaimed moneys shall have been paid to any county treasurer, any person claiming an interest in and a right to any such unclaimed moneys or any part thereof, may institute an action in the superior court for an order directing the county treasurer to pay to the petitioner such amount as the court shall determine the plaintiff is entitled to, which in no case shall include interest on such deposit from the date of payment to the county treasurer. Not less than 15 days' notice of the said application together with a copy of the complaint, shall be served upon the county treasurer and the county counsel of the county, and such service shall be deemed to be service upon the county. The court shall

hear and determine the matter, and may make an order directing the county treasurer to pay to the petitioner such amount as he determines the petitioner is entitled to. The county treasurer, upon receipt of a certified copy of the said order, shall be authorized, empowered and required to pay such sum as the said order shall direct from any available funds in his hands and if there are no available funds he shall report the fact to the board of chosen freeholders of the county and an appropriate item for the payment thereof shall be included in the next annual county budget. L. 1948, c. 456, p. 1879, §9

40:26A-10. Appeal. Any person aggrieved by any order of the court made upon a petition for an order directing the county treasurer to pay any unclaimed moneys, may appeal to the appellate division of the superior court, provided such appeal be taken within 40 days after the making of the said order. L. 1948, c. 456, p. 1879, §10

40:38-1. Oath; bond; execution; amount; approval; conditions; surety; filing. Every person who shall be elected clerk of a county shall, before he enters on the execution of his office or is admitted to take the oath prescribed by law, enter into bond to the state of New Jersey and to the county of . . . as their interest may appear, with sufficient corporate surety and approved of by the judge of the county court of the county having but 1 judge of such court and, in counties having more than 1 judge, the judge senior in point of service, in the sum of \$15,000 00 or in such greater sum not exceeding \$50,000 00 as the judge may order; provided, that should there be no judge of the county court appointed for the county having but 1 judge of such court, or the judge is not able to serve, then the duty herein prescribed for the judge shall be performed by the superior court judge assigned to such county. The bond shall be conditioned that he will well and truly execute the office of clerk of the county of . . . , and justly, faithfully and impartially perform and execute all duties pertaining to such office, as well with respect to all persons concerned, as to the said county and as to the state of New Jersey, account for all money received in such office according to law, and at the expiration of his term of office deliver to his successor in office all the things, books, papers, records and writings in his office or appertaining thereto.

The bond, approved by the judge, together with the oath of office, shall be filed and recorded in the office of the secretary of state of New Jersey and a duplicate filed with the clerk of the board of chosen freeholders of such county. As amended L. 1943, c. 21, p. 53, §1

40:27-6. Buildings in roadways; permits; hearing and review; penalty; injunction. No building shall be erected in the bed of any highway

adopted and shown as a part of the official county map unless a permit therefor is issued by the board of chosen freeholders. For such purpose such board is hereby created a discretionary administrative body, and shall when so acting be deemed an independent statutory body and all its transactions when so acting shall be separately recorded in minutes independent of the minutes of the board of chosen freeholders when acting as a legislative body. When so acting it shall have power by a vote of a majority of all its members to grant or withhold such a permit.

In such a meeting the board shall have power in considering the application for a permit for a specific building, by a vote of a majority of all its members, to grant a permit for a building in such a highway, which will as little as practicable increase the cost of opening such highway, or tend to cause a change of such official map, and such board shall impose reasonable requirements as a condition of granting such permit, which requirements shall be designed to promote the health, convenience, safety and general welfare of the public and shall inure to the benefit of the county. Before taking such action the board shall give a public hearing at which parties in interest and others shall have an opportunity to be heard. At least 10 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the county. The board shall refuse a permit where the land of the applicant within the mapped highway is already earning a fair return, or where he is in no way injured by placing his building outside of the mapped highway.

An appeal to the superior court to review any decision of the board refusing or granting such permit may be taken after the filing of the decision in the office of the board. The allowance of the appeal shall not stay proceedings upon the decision unless so ordered by the court. Whoever shall construct or begin the construction of such a building without a permit shall be guilty of a misdemeanor, and shall forfeit and pay a penalty of not more than \$100 for each day that work on such structure continues. The county may also enjoin such construction by action for injunction brought in any court of equity jurisdiction or may recover the penalty by a civil action in any court of competent jurisdiction.

40:30-1. Petition for construction of drainage works; engineer appointed. If a petition, stating that any particular place or district, described by metes and bounds, in a county is in a condition detrimental to the public health by reason of insufficient drainage, and signed by at least 100 freeholders who are residents of such county and the assessed value of whose real estate, exclusive of that described in the petition, is certified by the officer, board or commission charged with the assessment of taxes to aggre-

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gate more than \$1,000,000, is presented to the assignment judge of the superior court in that county, such judge may appoint a civil engineer to make plans and specifications for the building of a sewer or sewers, the erection and construction of pumps, dykes, dams, tide banks and such other works and such filling and excavating as may be necessary to secure a sufficient and proper drainage of such particular place or district required to be drained. Such judge may remove a civil engineer so appointed and appoint another in his stead.

40:30-2. Compensation of engineer. Upon receipt of a report from the civil engineer on the proposed drainage works, the assignment judge shall certify to the board of freeholders of the county in which said area is located the compensation which the engineer, in his judgment, is entitled to receive for the services rendered, and the board shall pay the same.

40:30-3. Drainage commission; appointment; duties. Upon receipt of the report, the assignment judge also shall appoint 3 freeholders of the county who shall, with the civil engineer, constitute a commission to supervise and direct the carrying out of the plans for the drainage works.

40:30-7. Commissioners of assessment; appointment; duties. Upon the completion of the drainage works, the commissioners who supervised and directed the construction thereof shall report the fact of the completion to the assignment judge of the superior court, who shall appoint 3 discreet freeholders of the county, whose lands are not subject to assessment for special benefits resulting from such drainage works, to act as commissioners of assessment, and shall fix their compensation. The commissioners of assessment shall assess the costs and expenses of the drainage works on the lands especially benefited thereby in proportion to the benefit received.

40:32-4. Summary investigation of construction of county buildings. When a building has or shall have been erected for county purposes on land belonging to the county, and a grand jury sitting in the county shall have presented to the court that there is evidence of failure to fulfill specifications as to quantity and quality of material or workmanship in its construction and the board of the chosen freeholders shall present to the superior court a request to make a summary investigation into the construction of the building, he may in his discretion make a summary investigation into the construction of the building. The court may in its discretion appoint experts to prosecute the investigation and cause the result to be published in such manner as he may deem proper.

All members, officers and agents of the board,

commission, committee or other body erecting such building, shall obey the orders of such court for facilitating the investigation, and any refusal or failure to obey such orders may be punished by the justice as for contempt.

The costs incurred under this section shall be taxed by the court, and upon its order be paid by the disbursing officers of the board, commission, committee or other body whose expenditures have been investigated.

40:37-7. Enforcement of rules and regulations; jurisdiction of courts. Any court within the county having jurisdiction over actions for the violation of municipal ordinances in any municipality within the county, shall have jurisdiction in actions for the violation of the rules and regulations prescribed by the commission. The rules and regulations shall be enforced by the same proceedings and processes, and the practice for the enforcement thereof shall be the same as that provided by law for the enforcement of the ordinances of the municipality in which the action is instituted.

40:37-8. Officers to execute process; copy of rules as evidence. The officers authorized to serve and execute process in the courts mentioned in section 40:37-7 of this title shall be the officers to serve and execute any process issued out of any court under this article.

A copy of any rule or regulation of the shade tree commission, certified to under the hand of the secretary or president, shall be taken in all courts as full and legal proof of the existence of the rule or regulation, and that all requirements of law in relation to the making and approval thereof, so as to make it legal and binding, have been complied with, unless the contrary be shown.

40:37-18. Rules and regulations effective throughout park; punishment for violations; trials. Whenever by virtue of section 40:37-17 of this title any park commission or other body has or shall have established any public park which is partly in another county, all ordinances, rules and regulations duly established by the park commission or body and applicable to the park shall be effective to the same extent in all portions of the park regardless of the county line. Every park police officer or other official empowered to make arrests in the county in which the park is controlled shall have the same powers of arrest in all parts of the park without regard to the county line. Any person arrested therein shall be conveyed to and be charged, prosecuted, and if convicted, sentenced by a municipal court in the county or municipality in which the offense was committed.

40:37-21. Commissioners; appointment; terms, powers and duties; vacancies. In any county having a population of more than 200,000, the assignment judge of the superior court presiding in

the courts of that county may appoint 5 persons to be known as the county park commissioners, who shall hold their office for 2 years from the date of their appointment, and shall serve without compensation. Vacancies may be filled by the judge for the unexpired terms only.

The commissioners shall consider the advisability of laying out ample open spaces for the use of the public in the county, and may make maps and plans of such spaces and collect such other information in relation thereto as the board may deem expedient.

As soon as is conveniently possible within their terms the commissioners shall make a report in writing of a comprehensive plan for laying out, acquiring and maintaining such open spaces.

40:37-41. Condemnation for roadways; commissioners appointed; benefits assessed. Whenever the commission shall determine to open and lay out a boulevard, parkway or roadway, or make any improvement thereof which shall require the condemnation of real estate or any right or interest therein, it shall give notice by publication, at least 10 days, in 1 or more of the newspapers circulating in the county wherein the real estate to be condemned is situate, of its intention to apply to the superior court in that county for the appointment of 3 disinterested commissioners to

a Make an appraisalment of the value of the real estate which in their judgment is necessary to be taken for the opening and laying out of any boulevard or roadway, or for the improvement thereof,

b Ascertain, fix and determine the amount of the damages occasioned thereby,

c Ascertain, fix and determine the amount of the special benefits which the laying out of such street or the improvement thereof will confer upon the owner of property benefited thereby.

40:37-42. Commissioners; appointment; duties; oaths. At the time and place specified in the notice provided for in section 40 37-41 of this title the superior court shall appoint 3 disinterested freeholders resident in the county to

a Make a just and true appraisalment of the value of the real estate to be condemned and taken by the county park commission for the purposes specified in the notice,

b Ascertain, fix and determine the amount of damages occasioned thereby;

c Make a just and true estimate and appraisalment of the special or peculiar benefits which the opening of any such boulevard, parkway or roadway, or the improvement thereof, may confer upon any owner of property benefited thereby, in proportion as nearly as may be to the benefit which each owner may be deemed to acquire. The commissioners so appointed shall forthwith take and subscribe an oath that they will faithfully and impartially perform their duties, and

their oaths shall be filed in the office of the county clerk.

40:37-44. Court to hear objections; report; confirmation. Upon receipt of any such report, signed by the commissioners, or any 2 of them, the court shall cause such notice to be given as it shall direct of the time and place of hearing any objections that may be made to the awards or assessments, and after hearing any matter which may be alleged against the same, shall, either confirm the report or refer it to the same commissioners for revision and correction. The commissioners shall return the same, when referred to them again, corrected and revised, or make a new report to the court without unnecessary delay, and the same, on being so returned, shall be confirmed or again referred by the court in the manner hereinbefore provided, and so from time to time until a report shall be made or returned which the court shall confirm.

The report when so confirmed shall be final and conclusive, upon the county park commissioners and upon the owners of real estate or any rights or interest therein affected thereby, and the court shall thereupon cause the report to be filed in the office of the county clerk, there to remain of record.

40:37-45. Rules of procedure before superior court. The supreme court may make such rules for the regulation of the practice and procedure under sections 40 37-24 to 40 37-71 of this title as it shall deem expedient.

40:37-46. Compensation of commissioners; expenses; inclusion in cost of improvement. The superior court shall, upon application by the county park commissioners or on its behalf, fix and determine the compensation to be paid the commissioners so appointed, and allow any other expense necessarily incurred in making any such assessment, all of which shall be paid by the county park commissioners. The cost and expense of making any assessment for benefits, including the fees of commissioners, may be included in making up the cost for the purpose of the assessment.

40:37-97. Commission; appointment; number. In any county having a population of more than 200,000, which is governed by sections 40 37-96 to 40 37-174 of this title, the assignment judge of the superior court presiding in the courts of that county shall appoint 5 persons a board of commissioners to be known as "the county park commission" (inserting name of county).

40:37-98. Commissioners; terms; vacancies. The commissioners first appointed in any county shall hold office for the term of 1, 2, 3, 4 and 5 years respectively, as indicated and fixed in their orders of appointment. Thereafter all commissioners shall hold office for the full term of 5 years and vacancies shall be filled by the as-

signment judge of the superior court by appointment for the unexpired term only

40:37-109. Condemnation for roadways; commissioners appointed; benefits assessed. Whenever the commission shall determine to open and lay out a boulevard, parkway or roadway, or make any improvement thereof which shall require the condemnation of real estate or any right or interest therein, it shall give notice by publication, at least 10 days, in 1 or more of the newspapers circulating in the county wherein the real estate to be condemned is situate of its intention to apply to the superior court of that county for the appointment of 3 disinterested commissioners to

a Make an appraisalment of the value of the real estate which in their judgment is necessary to be taken for the opening and laying out of any boulevards or roadways, or for the improvement thereof,

b Ascertain, fix and determine the amount of the damages occasioned thereby;

c Ascertain, fix and determine the amount of the special benefits which the laying out of the street or the improvement thereof will confer upon any owner of property benefited thereby

40:37-110. Commissioners; appointment; duties; oaths. At the time and place specified in the notice provided for in section 40 37-109 of this title the superior court shall appoint 3 disinterested freeholders resident in the county to

a Make a just and true appraisalment of the value of the real estate to be condemned and taken by the county park commission for the purposes specified in the notice,

b Ascertain, fix and determine the amount of damages occasioned thereby,

c Make a just and true estimate and appraisalment of the special or peculiar benefits which the opening of any such boulevard, parkway or roadway, or the improvement thereof, may confer upon any owner of property benefited thereby, in proportion as nearly as may be to the benefit which each owner may be deemed to acquire. The commissioners so appointed shall forthwith take and subscribe an oath that they will faithfully and impartially perform their duties, and their oaths shall be filed in the office of the county clerk

40:37-111. Hearing and notice; view premises; report. The commissioners so appointed shall fix a time and place when they will hear the persons interested in the property to be taken, and in the benefits to be conferred by the proposed improvement, and shall give public notice of such time and place for at least 10 days prior to the day of meeting in 2 or more of the newspapers published and circulating in the county

After having viewed the premises and heard the parties interested, they shall proceed to estimate and fix the value of the real estate

taken and the damages caused by such taking, and ascertain and determine the amount of special or peculiar benefits conferred upon the owners of property benefited, in proportion as nearly as may be to the benefits which each owner shall be deemed to acquire, and to make report of their assessments to the court. They may report the damages awarded and the benefits assessed in any case in the same report or separately as they may determine

40:37-112. Court to hear objections to report; confirmation. Upon receipt of any such report, signed by the commissioners, or any 2 of them, the court shall cause such notice to be given as it shall direct of the time and place of hearing any objections that may be made to the awards or assessments, and after hearing any matter which may be alleged against the same, shall, either confirm the report or refer it to the same commissioners for revision and correction. The commissioners shall return the same, when referred to them again, corrected and revised, or make a new report to the court without unnecessary delay, and the same, on being so returned, shall be confirmed or again referred by the court in the manner hereinbefore provided, and so from time to time until a report shall be made or returned, which the court shall confirm

The report when so confirmed shall be final and conclusive, upon the county park commissioners and upon the owners of real estate or any right or interest therein affected thereby, and the court shall thereupon cause the report to be filed in the office of the county clerk, there to remain of record

40:37-113. Rules of procedure before superior court. The supreme court may make such rules for the regulation of the practice and procedure under sections 40 37-96 to 40 37-174 of this title as it shall deem expedient

40:37-153. Enforcement of penalties; jurisdiction of courts. Penalties for the violation of the rules and regulations provided for in section 40 37-152 of this title shall be enforced by and through such process and method of procedure as shall be prescribed by the commission, by and before any magistrate of any municipality in the county, upon proper complaint on oath being made before him. On the conviction of the offender, in default of the payment of the penalty imposed, the magistrate may commit him to the county jail for a term not exceeding 10 days

40:37-156a. Appeal. Any member or officer of any such police force or police department not operating under the provisions of subtitle 3 of the title Civil Service (11 19-1 et seq) who has been convicted of any violation of any of the rules or regulations of such departments by the official or board empowered to try members of such police department may appeal such conviction to the county court of the county in

which such county park is situated. Such appeal shall be taken by giving written notice thereof to the officer or board convicting the member of such department within 10 days after notice of such conviction is given to the member convicted. Within 10 days after giving notice of appeal, the appellant shall file with the county court a petition setting forth that such appeal has been taken and the grounds upon which it is based. The county court shall thereupon by order direct the officer or board making such conviction to send a copy of the record of such conviction, including the rule or regulation violated and the charge or charges upon which the appellant was tried, to such court by a day to be fixed and on such day, or thereafter, such county court shall retry such charge or charges de novo and shall either affirm or reverse such conviction. The court may order the appellant to be returned to any office or position from which he may have been removed under such conviction and that he be restored to all things he may have lost thereby, and may make such other order as the court shall deem proper under the circumstances. Each party to the appeal shall have the usual right to subpoena witnesses and the procedure for such trial shall be the same as in other trials in the county court. Added L 1939, c 44, p 63, §1

40:37-173. Clerk to deliver copy to judge of the superior court; commissioners appointed. If the provisions of sections 40 37-96 to 40 37-174 of this title shall have been adopted at such election the county clerk shall within 5 days after the filing of his tabulated statement and certificate, deliver a certified copy thereof to the judge of the superior court presiding in the court of such county, and within 10 days thereafter such judge shall appoint the park commissioners herein provided for

40:37-211. Condemnation for roadways; commissioners appointed; benefits assessed. Whenever the commission shall determine to open and lay out a boulevard, parkway or roadway, or make any improvement thereof which shall require the condemnation of real estate or any right or interest therein, it shall give notice by publication, at least 10 days, in 1 or more of the newspapers circulating in the county wherein the real estate to be condemned is situate of its intention to apply to the superior court of that county for the appointment of 3 disinterested commissioners to

a Make an appraisal of the value of the real estate which in their judgment is necessary to be taken for the opening and laying out of any boulevard or roadway, or for the improvement thereof,

b Ascertain, fix and determine the amount of the damages occasioned thereby;

c Ascertain, fix and determine the amount of the special benefits which the laying out of the

street or the improvement thereof will confer upon any owner of property benefited thereby
Source L 1926, c 331, p 743, §7

40:37-212. Commissioners; appointment; duties; oaths. At the time and place specified in the notice provided for in section 40 37-211 of this title the superior court shall appoint 3 disinterested freeholders resident in the county to

a Make a just and true appraisal of the value of the real estate to be condemned and taken by the county park commission for the purposes specified in the notice,

b Ascertain, fix and determine the amount of damages occasioned thereby,

c Make a just and true estimate and appraisal of the special or peculiar benefits which the opening of any such boulevard, parkway or roadway, or the improvement thereof, may confer upon any owner of property benefited thereby, in proportion as nearly as may be to the benefit which each owner may be deemed to acquire. The commissioners so appointed shall forthwith take and subscribe an oath that they will faithfully and impartially perform their duties, and their oaths shall be filed in the office of the county clerk.

Source L 1926, c 331, p 743, §7

40:37-213. Hearing and notice; view premises; report. The commissioners so appointed shall fix a time and place when they will hear the persons interested in the property to be taken, and in the benefits to be conferred by the proposed improvement, and shall give public notice of such time and place for at least 10 days prior to the day of meeting in 2 or more of the newspapers published and circulating in the county. After having viewed the premises and heard the parties interested, they shall proceed to estimate and fix the value of the real estate taken and the damages caused by such taking, and ascertain and determine the amount of special or peculiar benefits conferred upon the owners of property benefited, in proportion as nearly as may be to the benefits which each owner shall be deemed to acquire, and to make report of their assessments to the court. They may report the damages awarded and the benefits assessed in any case in the same report or separately as they may determine

Source L 1926, c 331, p 743, §7

40:37-214. Court to hear objections to report; confirmation. Upon receipt of any such report, signed by the commissioners, or any 2 of them, the court shall cause such notice to be given as it shall direct of the time and place of hearing any objections that may be made to the awards or assessments, and after hearing any matter which may be alleged against the same, shall, by rule or order, either confirm the report or refer it to the same commissioners for revision and correction. The commissioners shall return the same, when referred to them again, corrected and revised, or make a new report

to the court without unnecessary delay, and the same, on being so returned, shall be confirmed or again referred by the court in the manner hereinbefore provided, and so from time to time until a report shall be made or returned, which the court shall confirm

The report when so confirmed shall be final and conclusive, upon the county park commissioners and upon the owners of the real estate or any right or interest therein affected thereby, and the court shall thereupon cause the report to be filed in the office of the county clerk, there to remain of record

Source L 1926, c 331, p 743, §7

40:37-215. Rules of procedure before superior court. The supreme court may make such rules for the regulation of the practice and procedure under sections 40 37-195 to 40 37-247 of this title as it shall deem expedient

Source L 1926, c 331, p 743, §7

40:38-4. Practicing law forbidden; penalty. The county clerk shall not practice or act as an attorney at law in any of the courts of the county of which he is clerk

If a county clerk shall practice or act contrary to this section, he shall be liable to a penalty of \$50 00 for each offense, to be recovered in an action at law, by any person who shall sue for the same, in any court where cognizable, with costs of suit He shall also be liable to be removed from office by impeachment.

40:38-8. Attendance on courts. The county clerk shall attend the daily sessions of the courts of which he is the clerk, either in person or by deputy, or by a competent person, whose duty it shall be, under the direction and control of a judge thereof, to keep minutes of the proceedings of the court or courts. The public shall have access to the minutes at all proper and reasonable hours, and the county clerk shall receive no extra compensation therefor

Source L 1902, c 152, p 484, §12 [C S p 1522, §23]

40:38-9. Temporary clerks of courts; appointment, powers and duties. If the county clerk fails to attend, either personally or by deputy, a session of a court of which he is clerk, the court may appoint a fit person to act as clerk during his absence.

The duties of the temporary clerk shall be confined to the clerical work of keeping the records of the court, swearing jurors, witnesses, taking verdicts, pleas or recognizances, and such other duties as are performed by the clerk in the presence of or under the direction of the court.

Source L. 1902, c 152, p 484, §13 [C S p 1522, §24]

40:38-11. Depositories for moneys received; designation. The assignment judge of the superior court in each county shall, in writing, designate the bank or trust company in this state, in which the county clerk shall deposit all moneys paid to him officially, and prescribe

the manner in which the same may be withdrawn, and the clerk shall be released from personal liability for the safe-keeping of moneys so deposited

The court in which any fund is deposited may, on application of any party interested therein, specially direct the deposit of such fund in a bank or trust company of this state to be designated by the court, and prescribe the manner in which it may be withdrawn

40:40-5. Inquests; justice of peace to act when coroner unavailable.

Source Rev 1877, p 170, §4 [C S p 1585, §4]

Note of Reporter Repeal, obsolete This section should be eliminated because there is no office of justice of peace

40:40-6. Inquests; duty of coroner; burial. On being informed of the happening of any of the events enumerated in section 40 40-4 of this title, the coroner shall immediately view the body and make proper inquiry respecting the cause and manner of death. If, from such inquiry, the said coroner shall be satisfied that no person has been guilty of causing or procuring the death, and that there are no suspicious circumstances, he shall, without further proceedings therein, deliver the body to the friends thereof for interment If there are no friends who will take charge of and bury the body, and if the deceased does not leave property sufficient to pay the expenses of the burial, the coroner shall bury the body

40:40-7. Inquests; certificate when inquest unnecessary; certificate of burial. When the coroner shall determine that an inquest is unnecessary he shall make a certificate, under his hand and seal, substantially as follows:

"I,, one of the coroners, of the county of, having notice of the death of, and having viewed the dead body of said, and made inquiry respecting his, or her, death, do hereby certify, that I am satisfied no guilt attaches to any person by reason of said death and that an inquest is unnecessary"

When it shall have become necessary for the coroner to bury the dead body, the certificate shall continue substantially as follows:

"That the deceased has no friends who appear to take charge of, and bury his, or her, body, nor, as I can ascertain, has he, or she, left property sufficient and within reach of the overseers of the poor, to defray the expenses thereof, and I have therefore buried the same."

The certificate shall be filed with and accompany the taxed bill of costs.

40:40-8. Inquests; jury; when necessary; precept for. If after view and inquiry the coroner shall have reason to suspect that the deceased came to his death by murder, manslaughter, or the contrivance, aiding, procuring or other misconduct of any person, and in counties having

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a county physician upon the written request of such county physician, he shall forthwith issue a precept, directed to any constable of the county where the dead body is found or lying, requiring him to summon a jury of 6 good and lawful men of the county, to appear before him at the time and place stated in the precept, which shall be in form following

"..... county, to wit The state of New Jersey to any of the constables of said county You are required immediately upon sight hereof, to summon good and lawful men of the county of to appear before me, A B, one of the coroners, of the county aforesaid at, in said county on the day of, at the hour of in the noon, then and there to inquire of, do and execute all such things as on behalf of the state, shall be lawfully given them in charge touching the death of C. D. (or a person unknown, as the case may be) And be you then there present to certify what you shall have done in the premises, and further to do and execute what, in behalf of the state, shall be then and there enjoined upon you Given under my hand and seal, at, in said county, the day of, in the year of our Lord"

40:40-9. Inquests; precept for jury; execution by constable; return. The constable to whom the precept shall be directed and delivered shall execute it forthwith, and repair to the place at the time stated therein, and make return of the precept with his proceedings thereon to the coroner who issued it.

40:40-10. Inquests; penalty for neglect by constable or juror. The coroner issuing the precept shall certify and return every constable who neglects or refuses to perform the services and duties prescribed by this chapter and every person who shall be summoned as a juror and shall not appear, in the superior court in that county, which court, unless a reasonable excuse be offered, shall fix such fine for the constable or juror so offending as it shall deem reasonable, not exceeding \$50 00.

40:40-11. Inquests; jury; oath. The coroner shall swear or affirm 6 jurors, and shall administer to the foreman of the inquest an oath, upon view of the body, in form following

"You, as foreman of this inquest, shall diligently inquire and true presentment make on behalf of the state of New Jersey, how and in what manner C D (or a person unknown, as the case may be), here lying dead, came to his death, and of such other matters relating to the same, as shall be lawfully required of you, according to the evidence"

The coroner shall swear or affirm the rest of the jurors, in form following

"Such oath as the foreman of this inquest hath

taken on his part, you and each of you, shall well and truly observe and keep on your part"

40:40-12. Inquests; charge to jury; facts required to be found. When the jurors are sworn the coroner shall charge them to declare upon their oaths the following things

a Whether the deceased died by murder, manslaughter, accident or otherwise,

b. When, where, by what means and in what manner the death occurred,

c If by murder, who were the principals and who were the accessories;

d If by manslaughter, who were the perpetrators,

e If by accident or otherwise, whether by act of God or man, and whether by injury, fall, stroke, drowning or other cause,

f If by the act of man, what instrument was used, and what were the circumstances surrounding the death;

g Who was present at the death;

h Who were the finders of the body,

i. Whether deceased died in the place where the body was found, or if elsewhere, by whom and how he was brought thence,

j Whence the deceased came, who he was and who are his relatives or neighbors,

k. If deceased died in prison, whether from ill treatment, and if so how and by whom,

l If deceased took his own life, how and under what circumstances; and

m All other facts and circumstances attending the death

40:40-13. Inquests; witnesses; process for; oath. The coroner may summon witnesses, commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question, and shall administer to every witness an oath in form following

"You solemnly swear that the evidence which you shall give to this inquest, on behalf of the state, touching the death of C D. (or a person unknown, as the case may be), shall be the truth, the whole truth, and nothing but the truth"

40:40-14. Inquests; testimony reduced to writing; binding material witnesses; offender's arrest. Every coroner, upon any inquisition before him wherein any person shall be indicted for murder or manslaughter, or as accessory to the crime of murder, either before or after the commission thereof, shall put in writing the effect of so much of the evidence given to the jury before him, as shall be material, and shall bind all witnesses by recognizance who give evidence material to prove the murder or manslaughter, or to prove any person to be accessory to the murder, to appear in the superior court within the county where the trial thereof shall be, then and there to give evidence against the offender at the time of trial

The coroner shall certify the recognizance and

the evidence, together with the inquisition or indictment taken and found before him, to the superior court at or before the time of the trial of the person so indicted

If the party charged with the offense by the inquest be not in custody, the coroner may issue process for his apprehension, and may take his examination, and commit him for trial

40:40-15. Inquests; post-mortem examinations; fees of physician. If the coroner shall deem it necessary to have a post-mortem examination made, he shall obtain the services of 1 or more licensed physicians or surgeons of this state, for that purpose

The board of chosen freeholders of the county where the dead body was found shall pay each of the physicians or surgeons a reasonable compensation for the services so rendered, upon receipt of a certificate from the coroner

In counties having a county physician the post-mortem examination shall be made by him

40:40-16. Inquests; chemical analysis in certain cases. If the coroner deems it necessary to have a chemical analysis made by a skilled person, of any substance which it is suspected has occasioned the death of the person whose body is found, he shall so report to assignment judge of the superior court judge presiding in the county, who may in his discretion, order the analysis to be made, and shall certify the expense thereof under his hand, and when so certified it shall be paid in the same manner as the expenses of holding the inquest

40:40-17. Inquests; return of inquisitions to superior court. All coroners shall deliver their inquisitions to the superior court in their respective counties, which court shall thereupon proceed against the offenders

40:40-18. Inquest in one county when body found in another; expenses. When the body of a person found dead or killed in one county, is taken to another county, and a coroner of such last mentioned county is duly notified to hold an inquest thereon, the expense of the inquest shall be paid by the county wherein the person was killed, or the body was found, upon presentation of the certificate of the coroner holding the inquest

Source Rev 1877, p 173, §25 [C S p 1589, §25]

40:40-19. Penalties for neglect of duty by coroner. If a coroner fails to hold an inquisition in a proper case, or fails to make the certificate or perform any of the duties required by this chapter, he shall, for each offense, be subject to a fine not exceeding \$500, to be fixed by the superior court upon proof of the offense by examination before it.

40:40-20. Writs returnable by single coroner. Any return made and signed by any 1 of the coroners for the time being, in any county, to

any writ, precept, process, or execution, which shall issue out of any court of record of this state, and be directed to the coroners of the counties respectively, shall be as good and effectual in law, as if such return had been made and signed by all the coroners of the county, but the act or return of any 1 or more of the coroners shall not prejudice or affect the rest

40:40-21. Fees; taxed bill of costs; verification. The bill for fees of the coroner or other person acting in his stead, shall be taxed by the county clerk, who before proceeding to tax bills of costs of inquests of death or bills of costs for the performance of the duties required by this chapter shall require of, and administer to all officers presenting such bills of costs for taxing, an oath that there are included therein only services actually rendered or duties performed and that the amount charged in the bill for jurors' and witnesses' services, has been paid to them, respectively. The clerk shall indorse the oath on some convenient part of the taxed bill of costs, and cause it to be subscribed by the coroner

40:41-2. Bond; judge to attend chambers to fix and approve. The assignment judge of the superior court assigned to the county shall attend at his chambers in the courthouse of such county on the first Tuesday after the general election for the purpose of fixing and approving the sheriff's bond

40:41-3. Bond; execution; amount; approval; conditions; surety; filing. The sheriff for the time being, or sheriff elect, as the case may be, shall attend before the judge of the superior court as provided in section 40 41-2 of this title with the certificate of his election, and shall then and there enter into bond to the state of New Jersey and to the county of ... as their interest may appear, with sufficient corporate surety to be approved by the judge in the sum of \$15,000 00 or in such greater sum not exceeding \$50,000 00 as the judge may order, provided, that should there be no assignment judge of the superior court appointed for the county having but 1 judge of such court, or the judge is not able to serve, then the duty herein prescribed for the judge shall be performed by any other judge of the superior court The bond shall be conditioned that he will well and truly execute the office of sheriff of the county of ..., and justly, faithfully and impartially perform and execute all duties pertaining to such office, as well with respect to all persons concerned, as to the said county and as to the state of New Jersey, account for all money received in such office according to law, and at the expiration of his term of office deliver to his successor in office all the things, books, papers, records and writings in his office or appertaining thereto The bond, approved by the judge shall be filed in the office of the secretary of state of New Jersey and

a duplicate filed with the clerk of the board of chosen freeholders of such county As amended L 1943, c 22, p 55, §2.

40:41-3.1. Failure to renew bond annually; renewal bond may be dated back and accepted. In case the sheriff for the time being of any county shall heretofore have failed to renew his bond annually, in the manner set forth in sections 40 41-2 and 40 41-3 of the Revised Statutes, any judge of the superior court of the county in which such sheriff shall have been elected to office shall have power, in his discretion, to accept from said sheriff a bond dating from the date when said sheriff's bond should have been renewed, and conforming in all other respects to the provisions of section 40 41-3 of the Revised Statutes, save as to the time of execution and filing only, and the acceptance and approval of such bond by said judge shall be held and taken to be a renewal of said sheriff's bond in full compliance with the constitution of this state and to have the same force and effect as if said sheriff's bond had been renewed in the manner now required by law L 1940, c 87, p 217, §1.

40:41-3.2. Waiver of forfeiture of office by accepting renewal bond late. The acceptance and approval of the bond provided for in section 1 of this act by said judge shall be held and taken to be an absolute waiver and cure of any forfeiture of office or vacancy in said office of sheriff now or hereafter claimed to have occurred by reason of said sheriff's failure to renew his said bond L 1940, c 87, p 217, §2

40:41-3.3. Defense to actions, acceptance of renewal bond late as. The acceptance and approval of such bond shall be a valid and effectual defense to any action or proceeding heretofore or hereafter instituted against the sheriff of any county based upon his failure to renew his bond annually It shall be the duty of all the courts in the state, both civil and criminal, and of original and appellate jurisdiction, to introduce and apply the curative force of this act to all suits and proceedings heretofore instituted or hereafter to be instituted at any and every stage thereof and this act shall be operative and effectual in all cases to cure the defaults hereinbefore mentioned L 1940, c 87, p 217, §3

40:41-4. Oath; subscribing; form; filing. Every sheriff elect after having entered into bond shall take and subscribe before the judge or judges, an oath in the words following

"I do solemnly swear (or affirm), that I will well and truly serve the state of New Jersey in the office of sheriff of the county of . . . , that I will in no case knowingly use or exercise the office of sheriff illegally, corruptly or unjustly, that I will neither directly nor indirectly by any means or device, or under any color or pretense whatsoever, accept, receive, take, use or enjoy or consent to the accepting, receiving,

taking, using or enjoying, any fee or reward of or from any person, for summoning, impaneling or returning any inquest, jury or tales, other than such fees or rewards as are or shall be allowed by law, that I will not directly or indirectly exact, demand, or receive any manner of fee or reward from any person for serving, executing, or returning any writ, precept, process, or execution, or for performing any other service, act, or duty in my office, other than such fees or reward as are or shall be allowed by law, that I will not neglect, refuse, or delay to serve and return any writ, precept, or execution, to me directed and delivered, and to make sale of property by me levied upon and seized by virtue of any writ or execution, for any gift, promise, reward, or favor, that I will do no wrong to any person, for any gift, reward or promise, nor for favor or hatred, that I will do right to all persons in all things belonging to my office, that I will truly, faithfully and impartially and with all convenient speed, summon, impanel and return, or cause to be summoned, impaneled and returned, good and lawful men for jurors, able and sufficient and not suspected or procured, as is or shall be directed by law, that I will to the utmost of my power duly, faithfully, and with all convenient speed, execute, or cause to be executed all writs, processes, precepts, and executions to me directed, and which shall come to my hands, and will faithfully and truly return the same, according to the best of my skill and understanding, and that I will truly and honestly, without fraud or deceit, do, execute, and perform all services, acts, and duties of my office, according to the best of my judgment, skill and power "

The oath in writing subscribed by the sheriff elect and attested by the judge or judges or a majority of them, shall be filed in the office of the county clerk

40:41-5. Bond and oath; certificate of approval; transmitted to governor. After having taken the bond and administered the oath of office the judge or judges, as the case may be, shall deliver to the sheriff elect a certificate thereof, under his or their hands and seals, directed to the governor, in the form following

"This day personally appeared before me (or us) the subscriber (or subscribers), judge (or judges) of the superior court of the county of . . . , A B, and executed a bond to the state of New Jersey, with sufficient surety by me (or us) approved, for the faithful execution of the office of sheriff of the county of . . . and subscribed the oath of office, in due form of law, given under my (or our) hand and seal, the . . . day of . . . , in the year of our Lord"

The certificate shall be annexed to the certificate of election and delivered to the sheriff elect, to be by him transmitted to the governor, that he may be commissioned.

PROPOSED REVISION OF SECTIONS OF OTHER TITLES

40:41-15. Appointee to fill vacancy; bond; oath; duties and liabilities. Every person appointed by the governor to fill a vacancy in the office of sheriff, pursuant to section 40 41-14 of this title shall, before proceeding to execute his office, give the bond and take and subscribe the oath in the manner and form prescribed for a sheriff elect. Upon receiving information from the governor of his appointment, he shall give notice thereof to the judge or judges, as the case may be, of the superior court, fixing a time, not less than 3 days from the giving of the notice, when he will be ready to qualify for the office. The judge or judges, as the case may be, shall attend at the office of the clerk of the court, at the time so fixed, on the penalty for default described in section 40 41-2 of this title.

The person so appointed shall in all respects comply with the provisions and requirements of this article and be subject to all regulations and restrictions herein prescribed, and be subject to the same penalties, suits and amercements for any violation thereof, or for any neglect of duty, as he would have been had he been elected to the office of sheriff.

40:41-16. Vacancies; designation of coroner to act pending new appointment. If, before the expiration of his term of office, the sheriff shall die or remove out of the jurisdiction of the state, or otherwise become disabled by law to execute the office, and in all other cases of vacancies in the office of sheriff, the chief justice or an associate justice of the supreme court shall designate by order, under his hand and the seal of the superior court, one of the coroners of the county to act as sheriff and perform the duties of that office in the county until a new sheriff is appointed or elected and duly qualified.

When the new sheriff shall be appointed or elected and duly qualified the powers and duties of the coroner, as acting sheriff shall cease, and all writs, processes and papers, belonging or appertaining to the office of sheriff, shall pass to and be vested in the newly appointed or elected sheriff.

40:41-42. Bonds; actions on; jurisdiction and procedure; damages, execution and costs. Actions on constables' bonds may be prosecuted in the superior court or county court, and shall be prosecuted as is provided by law as to suits on sheriffs' bonds. The court in which judgment shall be obtained on a constable's bond shall from time to time, upon due notice, assess the damages which shall have been sustained by any person by reason of any neglect or default of the constable in his official duties, and shall award execution thereon, with costs, provided the assessment does not exceed the penalty of the bond.

40:41-43. Bond; assessment of damages by jury. The assessment of damages provided by

section 40 41-42 of this title to be made by the court shall be made by a jury, upon application of either party interested.

Source Rev 1877, p 149, §4 [C S p 1528, §4]

40:41-44. Repeal, obsolete

Source Rev 1877, p 149, §5 [C S p 1529, §5]

40:41-45. Bond of prosecutor. The person for whose use the action is brought shall, if required before issue joined, give bond to the defendants in the sum of \$100 00, with sufficient sureties, conditioned to prosecute the action with effect, and pay costs if the plaintiff discontinues, be nonsuited or judgment pass against the plaintiff. If individual and not corporate surety is given the sureties shall be freeholders and residents of the state. The bond shall be filed in the office of the clerk of the court in which the action is pending.

Source Rev 1877, p 150, §6 [C S p 1529, §6]

40:41-46. Relief of sureties on constable's bond. If a constable absconds, or becomes insolvent or incapable of performing the duties of his office, the county court of that county may, on application, authorize his surety or sureties for the time being to ask, demand, sue for and recover any moneys which the constable could or might lawfully demand, levy and receive by virtue of any process in his official capacity, and all moneys in the hands of any person collected by the constable on any execution or process, which at the time of his absconding, insolvency or incapacity were not paid over to the plaintiff or person entitled thereto.

40:41-47. Suits by constable's surety; application; judgment; costs. When, by the absconding, insolvency or incapacity of a constable, executions or other process in his hands remain unexecuted, in whole or in part, the surety on his official bond, when authorized as provided in section 40 41-46 of this title may apply to a judge of the county district court, as the case may be, of the county where the judgment was rendered and execution issued thereon, for a summons in an action at law to recover on the judgment and for execution thereon, in the name of the plaintiff in the original process and against the defendant therein.

The surety shall produce before the judge, a transcript of the judgment and the execution or executions issued thereon, and the defendant may plead payment or satisfaction of the judgment or execution, in whole or in part, to the absconding, insolvent or incapable constable, or other lawful discharge.

If final judgment be rendered against the defendant, execution may be issued immediately for debt and costs, but if the judgment be for the defendant, with costs, the surety shall pay the same, and if recovered against the plaintiff named in the record, they may recover the same from the surety.

PROPOSED REVISION OF SECTIONS OF OTHER TITLES

40:—Return of fine when appeal decided in favor of defendant. When a defendant in a proceeding before a municipal court in any municipality has paid a fine on being found guilty of an offense and has appealed from the judgment and obtained a decision in his favor terminating the case of the municipality against him, it shall be

lawful for the board in control of the finances of the municipality wherein the trial was had, to return to the person the amount of the fine so paid by him

Source R S 2 215-8

Note of Reporter The Reporter regards this section as unnecessary, however, should it be retained it should be placed in Title 40

PROPOSED REVISION

Title 41. OATHS AND AFFIDAVITS

41:2-1. Before whom taken. All oaths, affirmations and affidavits required to be made or taken by law of this state, or necessary or proper to be made, taken or used in any court of this state, or for any lawful purpose whatever, may be made and taken before any one of the following officers

The justices or judges of the courts of this state,

Attorneys at law of this state (whether so designated or as counselors at law, masters or special masters in chancery or of the superior court),

Supreme court commissioners or supreme court examiners or commissioners or examiners of the superior court,

Mayors, aldermen or commissioners of cities, towns or boroughs,

Surrogates, registers of deeds and mortgages and county clerks, and their deputies,

City clerks,

Clerks of the courts of this state,

Notaries public;

Commissioners of deeds,

The chief and associate justices of the United States supreme court,

The judges, clerks and deputy clerks of any court of the United States whose territorial jurisdiction includes this state

This section shall not apply to official oaths or affirmations required to be made or taken by any of the officers of this state, nor to oaths, affirmations or affidavits required to be made and taken in open court as to which the authority for administration thereof shall remain as heretofore

Note of Reporter (a) This section is revised to conform to the new titles arising from the 1947 constitution. E.g., master's and special masters in chancery are continued as officers of the superior court (Article VI, section IV, paragraph 7), and those capacities have been listed under the main heading of attorneys at law. Judges and clerks of U S courts with jurisdiction in New Jersey have been added

(b) To avoid misunderstanding, the exception as to oaths in open court is expressed as saving the authority heretofore existing. Power to administer oaths to witnesses is inherent in any court

(c) The last provision for exception of cases where notice is required is eliminated as obsolete. The present practice authorizes depositions on notice before any official authorized to take affidavits

41:2-4. Duty to administer oath of allegiance. Any court of judicature shall administer the oath of allegiance to such person as shall be by law required to take the same in such court

Note of Reporter This section is restored to its form prior to the 1944 amendment. It is considered undesirable to attempt added reference to military personnel in existing statutes. Special situations arising from military service are best provided for by separate general provision

41:2-5. Oath of allegiance when official oath required. It shall be lawful for every court, body corporate, justice, judge or other person, before whom it is or shall be incumbent for any person, elected or appointed to office, to take his official oath, to administer at the same time the oath of allegiance to such person, if he is or shall be required by law to take the same

41:2-6. Oath of allegiance when official oath not required. Except as otherwise provided, where the oath of allegiance is or shall be required by law, without any official or other oath, the same may be administered by any justice or judge of any court of this state, who shall administer the oath of allegiance to any person who shall apply to take the same

41:2-7. Oath of office and of allegiance of governor. The chief justice, or any of the associate justices, of the supreme court, or any member of the senate, shall be and is hereby authorized to administer the oaths of office and allegiance to the governor, elect or acting, which oaths, if the legislature be in session, shall be administered in the presence of the senate and house of assembly at such place as they may designate

41:2-10. Oaths of office and of allegiance of secretary of state, attorney general, or of supreme and superior courts. The chief justice of the supreme court and each associate justice thereof, and each judge of the superior court, may administer the oaths of office and of allegiance to any person appointed to the office of secretary of state, or attorney general, or clerk of the supreme or superior courts, or to any

PROPOSED REVISION OF SECTIONS OF OTHER TITLES

other office as to which no other provision is made for the administration of such oaths

40:2-11. Oath of office and allegiance of sheriffs and coroners. The clerk for the time being of the county court of each county shall administer the oaths of office and allegiance to every person elected sheriff or coroner in and for said county

Note of Reporter Oaths of county court judges now administered under L 1948, c 335, p 1321, §3 (C 41 2A-3)

Justices of the peace are abolished

As to administration of oaths by military officers see Note of Reporter to R S 41 2-4

41:2-12. Enrollment by clerk of county court of names of persons taking oaths before him. The clerk of each county court shall enroll the name of every person to whom he shall administer any official oath or oath of allegiance, together with the time of administering the same, on paper or parchment, to be by him for that purpose kept and filed in his office, and shall transmit, within 20 days after administering such oath, a copy of the enrollment to the secretary of state to be by him filed in his office

41:2-13. Absence, etc. of county clerk, judge to act. In case of the absence, removal, death, or any other disability of the county clerk, any judge of said court may administer the oaths of office and allegiance to commissioners of deeds, notaries public, as well as to any other person or persons permitted or required to take the same before such clerk, and any official's oath or oaths so administered shall be as effectual in law as if administered by said clerk, and such judge shall promptly report the name of the person to whom the oaths were administered and the date thereof, to the said clerk or his successor, who shall enroll the same, and transmit a copy of the enrollment to the secretary of state, as directed by section 41 2-12 of this title.

41:2-14. Repealed

41:2-15. Oath of office and allegiance of county court clerks. Any judge of a county court may administer the oaths of office and allegiance to any person who shall be elected or appointed clerk of the court, and the clerk shall thereupon enroll his own name and the time of his being sworn into office, and transmit a copy of such enrollment to the secretary of state to be by him filed in his office

41:2-16. Neglect of duty by county court clerk; penalty. If the clerk of any county court shall neglect or refuse to perform, in due time, any service or duty enjoined on him by this title,

he shall, for every such offense, forfeit \$30 00, to be recovered by an action at law, with costs, by any person who will sue for the same

41:2A-1. Form of oath. The chief justice and each associate justice of the new supreme court, each judge of the superior court and of the county courts, and each judge of the inferior courts of limited jurisdiction, before entering upon the duties of his office, shall take and subscribe the oath of allegiance prescribed by R S 41 1-1, the oath to support the constitution of this state and of the United States prescribed by R S 41 1-3 and the following oath of office

"I, . . . , do solemnly promise and swear that I will administer justice without respect to persons, and faithfully, impartially and justly perform all the duties incumbent on me as . . . , according to the best of my abilities and understanding, and agreeably to the constitution and laws of the United States and of the state of New Jersey So help me God "

Source L 1948, c 335, p 1320, §1

41:2A-2. Repeal

41:2A-3. Administering oaths. Any justice of the supreme court may administer the oaths to a person appointed chief justice of the supreme court, associate justice of the supreme court or judge of the superior court, and any justice of the supreme court or judge of the superior court may administer the oaths to a person appointed a judge of the county court, or of an inferior court of limited jurisdiction

Source L 1948, c 335, p 1321, §3

41:2A-4. Subscribing and filing of oaths. The oaths shall also be subscribed by the judicial officer taking the oaths and, if the judicial officer is a supreme court justice or judge of the superior court, shall be filed in the office of the secretary of state, and if a judge of a county court or of an inferior court of limited jurisdiction, shall be filed in the office of the county clerk of the particular county and a copy thereof shall be sent within 20 days by the county clerk to the secretary of state, who shall file such copy

Source L 1948, c 335, p 1321, §4

41:2A-6. Oaths of office and allegiance while in military service. Whenever any person who shall be required to make an oath of office, or of allegiance, shall be in the military or naval service of the United States and is prevented thereby from attending in this state before any officer authorized to take such oaths in the usual course, he shall so advise the secretary of state who shall thereupon furnish such person with copies, in writing, of the oaths to be made by

him, and the same may then be made before any commissioned officer of the military or naval forces of the United States, who shall thereupon return the same to the secretary of state together with his certification, over his signature and recital of his rank and designation as such commissioned officer, that the person making

said oaths is then in such service and is prevented thereby from attending in this state before any officer authorized to take such oaths in the usual course. The secretary of state shall transmit a certified copy thereof to such other officer, if any, as may be required by law to keep a record of such oaths.

PROPOSED REVISION

Title 42. PARTNERS AND PARTNERSHIP ASSOCIATIONS

42:3-19. Receiver for expired or dissolved association; application; proofs; summary hearing. Any creditor or member of any limited partnership association which has expired by its own limitation, or been otherwise dissolved, or which shall so expire or be dissolved may, at any time after such expiration or dissolution, by summary or plenary action apply to the superior court for the appointment of a receiver or receivers for the association.

42:3-22. Sale of property of association by trustees or receivers. The receivers appointed under authority of section 42:3-20 of this title shall have power to sell, convey and assign all of the estates, property, rights and interests of the association, and shall hold and dispose of the proceeds of any such sale under the direction of the superior court.

The title of the grantees or purchasers to the lands and property thus conveyed and assigned by said receivers shall be the same as if the property had been sold, conveyed and assigned by the association and all of its individual partners or members before the expiration or dissolution thereof or by all of the individual partners or members after the expiration or dissolution.

42:3-23. Continuance of powers of trustees or receivers. The powers and authority vested in the receivers appointed under authority of section 42:3-20 of this title may be continued as long as the superior court shall deem necessary.

42:3-24. Application for injunction and for receivers or trustees for insolvent associations. Any creditor or member of any limited partnership association formed under authority of article 1 of this chapter (§42:3-1 et seq.) which has become or is or shall become insolvent, or which has or shall suspend its ordinary business for want of funds to carry on the same, or the business of which has been and is being conducted at a great loss, greatly prejudicial to the interest of its creditors or members, may, by plenary or summary action, apply to the superior court for an injunction and the appointment of a receiver or receivers or trustee or trustees for the association.

42:3-25. Issue of injunction. If it shall appear to the court that the association has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors or members, so that its business cannot be conducted with safety to the public and advantage to the members, it may issue an injunction to restrain the association, and its officers and agents, from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order.

42:3-26. Appointment of receivers or trustees when injunction granted. The superior court, at the time of ordering an injunction to issue as provided by section 42:3-25 of this title, or at any time thereafter, may appoint a receiver or receivers or trustees for the creditors and members of the association, who shall have all the powers and authority, rights and privileges, in this article prescribed and conferred upon the receiver or receivers hereinbefore provided for.

42:3-27. Oath of receivers or trustees; filing. Every receiver or trustee shall, before assuming the duties of his office, enter into such bond and comply with such terms as the court may prescribe, and take and subscribe the following oath or affirmation:

"I, . . . , do swear (or affirm) that I will faithfully, honestly and impartially execute the powers and trusts reposed in me as receiver (or trustee), for the creditors and members of the . . . , and that without favor or affection". Such oath or affirmation shall be filed in the office of the clerk of the superior court in 10 days after the taking thereof.

42:3-28. Jurisdiction of superior court. The superior court shall have jurisdiction of the applications provided for in this article, and of all questions arising in the proceedings thereon, and may make such orders and judgments therein as justice and equity shall require.

42:3-30. Blank

42:4-1. Purpose and construction of article. This article is remedial, provides additional remedies, and shall be liberally construed to effect its purpose, which is to permit the superior court speedily to dispose of cases involving dissolution of partnerships and the distribution of assets, and to prevent the acquisition of liens and preferences after the filing of an application looking toward the distribution of the assets of a partnership amongst creditors. It shall not be so construed as to deprive the superior court of any of its existing jurisdiction.

42:4-2. Summary proceeding. When an application is made to the superior court for the dissolution of a partnership, with a view to a distribution of assets amongst creditors and others entitled thereto, the court may proceed in a summary manner if the court so orders.

42:4-3
to

42:4-6. Blank

42:4-7. Temporary receiver or other custodian of property. At the commencement of the action or at any subsequent time before or after a judgment of dissolution or other judgment is made the court may appoint a temporary receiver or may charge the persons in actual control of the partnership assets as trustees under appointment by and accountable to the court, and, from the time of the making of such order, the property of the partnership shall, until an order of the court made to the contrary, be considered as in custodia legis, with a view to ultimate distribution amongst creditors and others entitled to participate therein.

42:4-8. Order to file claims and bar creditors. The court may, either before or after a judgment of dissolution, make an order directing creditors to file their claims within such reasonable time as the court shall, by special order, prescribe and may make an order barring creditors.

42:4-10
and

42:4-11. Blank.

42:4-13. Dissolution authorized; application; order of dissolution. When a member of a partnership has been or shall be adjudged a lunatic, pursuant to the rules and practice of the superior court, the court may, on application of any of the other partners or such other person as the court shall determine to be entitled to make the application, by order dissolve the partnership.

42:4-14. Powers and duties of guardian in general. When a partnership is dissolved by order as provided by section 42:4-13 of this title, or is otherwise dissolved by due course of law,

and a member thereof has been or shall be adjudged a lunatic, the guardian of such lunatic, in the name and behalf of his ward, may join and concur with the other members of the partnership or other persons interested in disposing of all the partnership property, in such manner and upon such terms as the court shall order and direct.

42:4-15. Conveyances by guardian; disposition of mental incompetent's share of partnership. The guardian mentioned in section 42:4-14 of this title may make and execute all such conveyances and do all things necessary to effectuate the provisions of this article as the court may order and direct. He shall also dispose of all money or property by him received for, from or on account of the lunatic's share or interest in the partnership as the court shall order and direct.

42:6-1. Application for injunction and receivers or trustees; procedure. When any voluntary association, carrying on business with partnership liabilities, is or shall become insolvent, has suspended or shall suspend its ordinary business for want of funds to carry on the same, or whose debts are unpaid and whose business is unsettled, any creditor or member of such association may, in a summary or plenary action, apply to the superior court for an injunction and the appointment of receivers or trustees for the winding up of the business and payment of the debts of the association. Thereupon the court may proceed in the manner provided by law for winding up insolvent corporations.

42:6-2. List of members filed with clerk of court. Upon the filing of the complaint a subpoena shall issue, directed to the trustees or managers of the association as in other cases, who shall, on penalty of being proceeded against as for contempt, file, with the clerk of the superior court within 10 days after service of the subpoena, a duly verified list of the names of all members of the association, with their several places of residence, upon whom process in the action shall be served.

42:6-3. Blank

42:6-4. Blank

42:6-5. Notice to creditors to file claims. The receivers or trustees appointed for the association shall give such notice as the court may direct to the creditors thereof, requiring them to file with them any claims they may have against the association, within such time as the court may direct, or be barred from all relief under the proceedings had by virtue of this chapter.

42:6-6. Blank.

42:6-7. Assessments on members to pay claims. If it shall appear by the report filed by the receivers or trustees that the assets of the

association are insufficient to pay its debts and the expenses attending the winding up of the same, the superior court may assess against each member thereof a sum to be paid by him to the receivers or trustees in liquidation of such indebtedness. In making the assessment, the court may inquire into the solvency or ability of

the members to pay the same, in order to assess sufficient moneys to pay all claims. If a sufficient amount to pay all claims is not assessed at one time, the court may, from time to time, make additional assessments, until an amount sufficient to satisfy all claims is obtained.

PROPOSED REVISION

Title 43. PENSIONS AND RETIREMENT AND UNEMPLOYMENT COMPENSATION

43:6-1 to 43:6-6.3;

43:6-6.11;

43:6-7 to 43:6-14. All saved from repeal

Note of Reporter. This leaves among the current statutes in this chapter only sections 43 6-6 4 to 43 6-6 10

43:6-1. Judges not reappointed; how affected.

Sections 43 6-1 to 43 6-6 of this title shall apply to any person otherwise qualified under sections 43 6-3 or 43 6-4 of this title, who shall have withdrawn from the service of the state by reason of not being reappointed to his judicial office.

Source R S 43 6-1

43:6-2. Former judicial officers; how affected.

Sections 43 6-1 to 43 6-6 of this title shall apply to any former judicial officer otherwise qualified under sections 43 6-3 and 43 6-4 of this title who has withdrawn from judicial service to the state by resignation or otherwise prior to September 17, 1920. The annual salary or compensation to be paid to him hereunder shall be computed from the date of resignation, but not prior to January 1, 1920, and shall be at the rate of one-half of the annual salary received on September 17, 1920, by the judicial officer holding a like office.

Source R S 43 6-2

43:6-3. Retirement of certain judicial officers; resignation. The chancellor, chief justice, any associate justice of the supreme court, judge of the circuit court, judge of the court of common pleas or vice chancellor who shall have served in 1 or more of the judicial positions named for a period of not less than 14 years and is 70 years of age or over, may retire from such service upon filing his resignation of the judicial office in the office of the secretary of state, accompanied by the statement that it is so filed for the purpose of taking advantage of the provisions of sections 43 6-1 to 43 6-6 of this title, provided that no common pleas judge shall be permitted to retire under authority of this section unless at the time of his retirement he shall have served as a full-time judge under the provisions of paragraph "a" of section 2 6-16 of the title Administration of Civil and Criminal Justice for at least 5 of said 14 years' service as a common pleas judge, service other than as a

full-time judge shall only be counted as three-fourths of its face amount.

43:6-4. Retirement for incapacity during term.

If a judicial officer mentioned in section 43 6-3 of this title shall, while in office, become physically or otherwise incapacitated for full and efficient service to the state in his judicial capacity, and such disability shall have developed during his term of service, and it is made to appear, as hereinafter provided, not only that the disability exists, but that it will, in all reasonable probability, continue permanently, he may retire from the state service in the manner provided in case of retirement under said section 43.6-3, although he may not have served the length of time or reached the age for retirement mentioned in that section.

43:6-5. Examination to determine disability; report; resignation. Before retirement may be taken under section 43 6-4 of this title, the judicial officer seeking to retire under it shall inform the governor of his desire to do so. The governor shall thereupon appoint 3 physicians of skill and repute in their profession and residents of this state, who shall examine the applicant for retirement and report to the governor as to his physical or other disability and whether in all reasonable probability, if they find the disability existent, it will continue permanently and does and will continue to prevent the applicant from giving full and efficient service to the state in the performance of his judicial duties. If the governor, upon receipt of the report, approves it, he shall file it, with his approval indorsed thereon, in the office of the secretary of state there to remain of record. Thereupon the applicant may file his resignation in that office and he shall be entitled to the benefit of sections 43 6-1 to 43 6-6 of this title as a retired judicial officer as fully as if retired under section 43 6-3 of this title.

43:6-6. Pension; payment; amount. A judicial officer retiring under the provisions of sections

43 6-1 to 43 6-6 of this title shall be paid an annual salary or compensation during the period of his natural life, commencing with the date of his resignation or failure of reappointment, at the rate of one-half of the annual salary received by him at the time of his retirement. The salary shall be paid by the state treasurer monthly, on warrant of the comptroller, out of any funds appropriated for that purpose or from funds not otherwise appropriated, except that in the case of a judge of the court of common pleas the salary shall be paid by the county treasurer of the county for which he was appointed.

43:6-6.3. Repeal. All acts and parts of acts inconsistent herewith are repealed.

43:6-6.4. Retirement of judges, chancellors, vice chancellors and justices under constitutional provision. Any chief justice of the new supreme court, any associate justice of the new supreme court, or any judge of the superior court who (a) shall have served at least 10 years in the aggregate in 1 or more of the judicial offices of chancellor, chief justice of the old supreme court, associate justice of the old supreme court, judge of the circuit court, vice chancellor, judge of the court of errors and appeals, judge of the court of common pleas, chief justice of the new supreme court, associate justice of the new supreme court, or judge of the superior court, and (b) shall be retired upon attaining the age of 70 years under the provisions of art VI, sec VI, par 3, of the constitution of 1947, shall be paid thereafter an annual pension during the remainder of his natural life in an amount equal to three-fourths of the annual salary received by him at the time of his retirement.

Effective Sept 13, 1948

43:6-6.5. Retirement of judges, chancellors, vice chancellors and justices after 10 years service when 70 or over. Whenever a person (a) holds the office of chancellor, chief justice of the old supreme court, associate justice of the old supreme court, judge of the circuit court, vice chancellor, chief justice of the new supreme court, associate justice of the new supreme court, or judge of the superior court, and (b) shall have served at least 10 years in the aggregate in 1 or more of the judicial offices of chancellor, chief justice of the old supreme court, associate justice of the old supreme court, judge of the circuit court, vice chancellor, judge of the court of errors and appeals, judge of the court of common pleas, chief justice of the new supreme court, associate justice of the new supreme court, or judge of the superior court, and (c) has attained the age of 70 years or more, he may retire from such service upon filing his resignation of his judicial office in the office of the secretary of state accompanied by the statement that it is so filed for the purpose

of taking advantage of the provisions of this act. He shall be paid thereafter an annual pension during the remainder of his natural life in an amount equal to three-fourths of the annual salary received by him at the time of his retirement.

43:6-6.6. Judges, justices, chancellors and vice chancellors subject to compulsory retirement or ineligible for reappointment when term expires. Any chancellor, chief justice of the old supreme court, associate justice of the old supreme court, judge of the circuit court, vice chancellor, chief justice of the new supreme court, associate justice of the new supreme court or judge of the superior court who (a) shall have served at least 10 years in the aggregate in 1 or more of the judicial offices of chancellor, chief justice of the old supreme court, associate justice of the old supreme court, judge of the circuit court, vice chancellor, judge of the court of errors and appeals, or judge of the court of common pleas, and (b) shall have attained the age of 70 years or more when his term of office expires, and (c) shall be, because of age, subject to compulsory retirement or ineligible for reappointment, shall be paid thereafter an annual pension during the remainder of his natural life in an amount equal to three-fourths of the annual salary received by him at the time of his retirement.

43:6-6.7. Disability of judges and justices, retirement for. If the chief justice of the new supreme court, any associate justice of the new supreme court, or any judge of the superior court, shall, while in office, become physically or otherwise incapacitated for full and efficient service to the state in his judicial capacity, he may give notice thereof and of his desire to retire to the governor. The governor shall thereupon appoint 3 physicians of skill and repute in their profession and residents of this state, who shall examine the applicant for retirement and report to the governor as to his physical or other disability and whether in all reasonable probability, if they find the disability existent, it will continue permanently and does and will continue to prevent the applicant from giving full and efficient service to the state in the performance of his judicial duties. If it is made to appear by such report that the disability exists and that it will in all reasonable probability continue permanently and if the governor approves the report the governor shall file it with his approval indorsed thereon in the office of the secretary of state. Upon such filing of the report, the applicant shall be retired and he shall thereafter be paid an annual pension during the remainder of his natural life in an amount equal to three-fourths of the annual salary received by him at the time of his retirement.

43:6-6.8. Death, judge, justice, chancellor or

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vice chancellor; pension to surviving widow. Whenever any person holding the office of chancellor, chief justice of the old supreme court, associate justice of the old supreme court, judge of the circuit court, vice chancellor, chief justice of the new supreme court, associate justice of the new supreme court, or judge of the superior court shall die while in office or shall die after retirement on a pension payable under the provisions of this act and, in either case, shall leave a widow surviving him whom he married before he had attained the age 50 years, an annual pension shall be paid thereafter to such surviving widow, so long as she lives and remains unmarried, in an amount equal to one-fourth of the annual salary received by her deceased husband at the time of his death or retirement, as the case may be

43:6-6.9 Payments to be made semimonthly. The payments provided for in this act shall be made semimonthly by the state treasurer out of state funds

43:6-6.10. Additional legislation, act intended as; retirement under other laws. This act is intended as additional legislation and shall not be construed as repealing any prior act or acts in whole or in part, but no person who has taken advantage of the provisions of Revised Statutes, section 43 6-1 to Revised Statutes, section 43 6-6 shall take advantage of the provisions of this act

43:6-6.11. Advisory masters of former chancery court. Any standing advisory master of the former court of chancery, who has reached the age of 77 years, and who has served the state as such master for a period of at least 25 years, shall be paid a pension of \$8,000 00 per annum, payable out of the treasury of this state in the same manner as other pensions are now paid
Effective May 28, 1949

43:6-7. Pension for associate justice of supreme court. An associate justice of the supreme court 68 years of age, who has served more than 20 years as an associate justice, and who has not been reappointed, shall be entitled to receive an annual compensation, during the period of his natural life equal to one-half of the yearly salary paid him during the last year of his service

The state treasurer, on warrant of the comptroller of the treasury, shall pay the annual compensation in semimonthly installments from the date of termination of the service of such associate justice.

43:6-8. Retirement and pension; widow. A person who shall have served continuously as sergeant at arms of the court of chancery for a period of 30 years or more and reached 60 years of age, may, with the consent of the chan-

cellor, on his own application or for disability, be retired and shall thereafter receive a pension from the state equal to one-half of the amount of compensation paid to him at the time of his retirement Upon his death, if he leaves a widow, the pension shall be paid to her during her lifetime and widowhood The pension shall be paid monthly by the state treasurer on the warrant of the comptroller, after the filing in his office of a certificate by the chancellor stating that such person had retired

43:6-8.1. Retirement at age of 70 when physically unfit; pension. A person who has served as sergeant at arms of the court of chancery, who has reached the age of 70 years and who is physically unfit for further service may retire upon a pension equal to two-thirds of the annual salary such person is receiving at the time of his retirement

43:6-8.2. Procedure on retirement. Such sergeant at arms shall file with the chancellor a doctor's certificate certifying that he is physically unfit for further service, and the chancellor shall make a certificate that such person shall be retired and file the certificate with the treasurer of this state Thereupon the person so retired shall receive for the term of his natural life in equal semimonthly installments the amount of the pension in this act authorized, and be paid by the treasurer of the state on warrant of the comptroller

43:6-9. Stenographic reporter defined. As used in sections 43 6-9 to 43 6-13 of this title "stenographic reporter" means and includes persons appointed by the chancellor or a vice chancellor or the justice of the supreme court holding any circuit in this state, to attend in person or by proxy the sessions of the court of chancery, the circuit court, court of oyer and terminer, court of quarter sessions and court of special sessions and perform therein the duties prescribed by the statute authorizing the appointment of stenographic reporters

43:6-10. Persons entitled to retirement and pension for service and age; application for retirement; amount of pension. Any duly appointed stenographic reporter who has served continuously in the court of chancery or any 1 circuit for at least 20 years, is 65 years of age, or more, and is physically incapacitated from further service as such stenographic reporter may, upon application in writing to the chancellor, vice chancellor or justice of the supreme court under whom or in whose circuit he is serving at the time of his application, be retired on an annual pension of not more than \$2,500 00

43:6-11. Determination by judicial officer. The amount of the pension, the age of the steno-

graphic reporter applying to be retired on a pension and the fact of physical incapacity for further service shall be fixed and determined in the manner as follows

The chancellor, vice chancellor or justice of the supreme court, under whom or in whose circuit the stenographic reporter is serving at the time of his application to be retired upon a pension, shall satisfy himself of the age and physical incapacity of the stenographic reporter applying for retirement upon a pension, and fix the amount of the pension. If the chancellor, vice chancellor or justice of the supreme court to whom the application is made is satisfied that the stenographic reporter applying for retirement upon a pension is 65 years of age, or more, and is physically incapacitated from further service as stenographic reporter, he may, if under all the circumstances he determines that the retirement of the stenographic reporter upon a pension is just and proper, make and sign, in the case of the chancellor or vice chancellor, 1 or more duplicate certificates, and, in the case of the justice of the supreme court, 2 or more duplicate certificates, as the case may require, certifying that he is satisfied that the stenographic reporter applying for retirement upon a pension is 65 years of age, or more, and is physically incapacitated from further service as stenographic reporter, and that he has fixed the amount of the pension at the amount stated in the certificate

43:6-12. Certificate filed; payment of pension. One of the certificates made by the chancellor or vice chancellor shall be filed with the state treasurer, and 1 of the certificates made by the justice of the supreme court shall be filed with the treasurer of each county composing the circuit of the supreme court in which the justice of the supreme court presides, and another certificate shall be filed with the state treasurer. Thereupon the applicant for retirement shall be paid annually in equal monthly installments during his lifetime a pension in the amount so fixed by the chancellor, vice chancellor or justice of the supreme court. The pension shall be paid out of the same funds and in the same manner as the salary or compensation of the stenographic reporter was paid to him while acting as stenographic reporter.

43:6-13. Length of service. A stenographic reporter shall be regarded as having served continuously under sections 43 6-9 to 43 6-13 of this title notwithstanding that a period of time elapsed between the death or resignation of the chancellor, vice chancellor or justice of the supreme court, under whom or in whose circuit the stenographic reporter shall have served, and the appointment of his successor, during which elapsed period the stenographic reporter was not employed elsewhere

43:6-13.1. Other stenographic reporters entitled to retirement and pension for service and age. In addition to the stenographic reporters mentioned in section 43 6-9 of this title, any other stenographic reporter who shall have continuously served as official or proxy, or both, in the supreme court holding any circuit in this state, the court of chancery, circuit court, court of common pleas, court of oyer and terminer, court of quarter sessions or court of special sessions, for at least 40 years and who is 64 years of age and who is physically incapacitated for further service, shall be subject to all of the provisions and entitled to all of the benefits of sections 43 6-9 to 43 6-13 of this title, and any such stenographic reporter retired under the provisions of this section shall be entitled to receive as pension one-half of the salary received by him at the time of his retirement, which pension shall in no event exceed the sum of \$3,000 00 per annum

43:6-14. Retiring certain court stenographers on pension. L 1927, c 67, p 122, entitled "An act concerning the pensioning of official court stenographers who have become incapacitated by reason of physical disability", approved March 14th, 1927, saved from repeal. [This act provides for the retirement and pensioning of certain stenographic reporters who have become physically incapacitated after upwards of 20 years' service on application to the chancellor, vice chancellor or supreme court justice and certificate by such judicial officer fixing the amount of pension.]
Source R S 43 6-14

43:21-6. Claims for benefits. (a) Filing Claims for benefits shall be made in accordance with such regulations as the director of the division of employment security of the department of labor and industry of the state of New Jersey may approve. Each employer shall post and maintain on his premises printed notices of his subject status, of such design, in such numbers, and at such places as the director of the division may determine to be necessary to give notice thereof to persons in the employer's service. Each employer shall give to each individual at the time he becomes unemployed a printed copy of benefit instructions. Both the aforesaid notices and instructions shall be supplied by the division to employers without cost to them.

(b) (1) Initial determinations. The director of the division shall designate a representative or representatives to promptly examine the claims and to determine which claims do and which claims do not meet the requirements of section 4(e), and as to those claims meeting the requirements of section 4(e) to further determine the weekly benefit rates and the maximum total benefits payable. Each claimant shall be promptly notified of the determination of his claim.

(2) Weekly determinations. The director of

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the division shall assign a representative or representatives to each local claims office for the purpose of making weekly determinations (except those under subsections 4(f) and 5(d) in the course of the benefit year, in accordance with the initial determination of a valid claim. Whenever a determination of eligibility shall be made with respect to the first week of the benefit year for which benefits are claimed, the claimant, the last employing unit and all employers in the base year shall be promptly notified of such determination. Whenever a determination of ineligibility or disqualification shall be made with respect to any week of the benefit year, the claimant shall be promptly notified of such determination.

(3) Any claimant or any interested entity or person may file an appeal from any determination under paragraphs (1) and (2) of this subsection within 5 calendar days after the delivery of notification, or within 7 calendar days after the mailing of notification, of such determination. Unless such an appeal is filed such determination shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is duly filed, benefits with respect to the period covered by the appeal shall be payable only after a determination of entitlement by the appellate tribunal, benefits payable for periods pending an appeal and not in dispute shall be paid as such benefits accrue, provided that insofar as any such appeal is or may be an appeal from a determination to the effect that the claimant is disqualified under the provisions of section 43 21-5 of the Revised Statutes or any amendments thereof or supplements thereto, benefits pending determination of the appeal shall be withheld only for the period of disqualification as provided for in said section, and notwithstanding such appeal the benefits otherwise provided by this act shall be paid for the period subsequent to such period of disqualification, and provided, also, that if there are 2 determinations of entitlement, benefits for the period covered by such determinations shall be paid regardless of any appeal which may thereafter be taken, but no employer's account shall be charged with benefits so paid if the decision is finally reversed.

(c) Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and the determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the board of review, unless within 10 days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

(d) Appeal tribunals. To hear and decide disputed benefit claims, including appeals from determinations with respect to demands for refunds of benefits under section 43 21-16(d) of this chapter (R S 43 21-1 et seq), the director with

the approval of the Commissioner of Labor and Industry shall establish 1 or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body consisting of 3 members, 1 of whom shall be a salaried examiner, who shall serve as chairman, 1 of whom shall be a representative of employers and the other of whom shall be a representative of employees, each of the latter 2 members shall serve at the pleasure of the commissioner and be paid a fee of not more than \$20 00 per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the division in any case in which he is an interested party. The director may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(e) Board of review. The board of review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The board of review shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and from any determination which has been overruled or modified by an appeal tribunal. The board of review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the board of review shall be heard by a quorum thereof in accordance with the requirements of subsection (c) of this section. The board of review shall promptly notify the interested parties of its findings and decision.

(f) Procedure. The manner in which disputed benefit claims, and appeals from determinations with respect to (1) claims for benefits and (2) demands for refunds of benefits under section 43 21-16(d) of this chapter (R S 43 21-1 et seq) shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the board of review for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness fees. Witnesses subpoenaed pursuant to this section shall be allowed fees at a

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rate fixed by the director. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this chapter (R S 43 21-1 et seq.)

(h) Appeal to courts. Any decision of the board of review in the absence of an appeal therefrom as herein provided shall become final 10 days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board of review as provided by this chapter (R S 43 21-1 et seq.) The board of review shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who may be a regular salaried employee of the board of review or has been designated by it for that purpose, or at the board of review's request, by the attorney general.

(i) Court review. After the decision of the board of review has become final, any party aggrieved thereby may secure judicial review thereof by an appeal to the superior court, appellate division.

Source 43 21-6, as am P L 1945, c 308, p 893, P L 1950, c 167, p 358

43:21-14. Collection of contributions; report and payment.

a In addition to such reports as the director of employment security may require under the provisions of subsection (g) of section 43 21-11 of this title, every employer shall file with the division of employment security periodical contribution reports on such forms and at such times as the director, with the approval of the division, shall prescribe, to disclose the employer's liability for contributions under the provisions of this chapter, and at the time of filing each contribution report shall pay the contributions required by this chapter for the period covered by such report. The division may require that such reports shall be under oath of the employer. Any employer who shall fail to file any report, required by the division or the director, on or before the last day for the filing thereof shall pay a penalty of \$100 for each day of delinquency until and including the tenth day following such last day and, for any period of delinquency after such tenth day, a penalty of \$100 a day or 20% of the amount of the contributions due and payable by the employer for the period covered by the report, whichever is the lesser. If there be no liability for contributions for the period covered by any contribution report or in the case of any report other than a contribution report, the employer or employing unit shall pay a penalty of \$100 a day for each day of delinquency in filing or \$15 00, whichever is the lesser. Any employer who shall fail to pay the contributions due for any period on or before the date they are required by the division to

be paid, shall pay interest at the rate of 1% a month on the amount thereof from such date until the date of payment thereof. Upon the written request of any employer or employing unit, filed with the division on or before the due date of any report or contribution payment, the division, for good cause shown, may grant, in writing, an extension of time for the filing of such report or the paying of such contribution with interest at the rate of 1% a month on the amount thereof, provided, no such extension shall exceed 30 days and that no such extension shall postpone payment of any contribution for any period beyond the day preceding the last day for filing tax returns under title IX of the federal social security act for the year in which such period occurs.

b The contributions, penalties, and interest due from any employer under the provisions of this chapter, from the time they shall be due, shall be a personal debt of the employer to the state of New Jersey, recoverable in any court of competent jurisdiction in a civil action at law in the name of the state of New Jersey.

c If any employer shall fail to make any report as required by the rules and regulations of the division pursuant to the provisions of this chapter, the division may make an estimate of the liability of such employer from any information it may obtain and, according to such estimate so made, assess such employer for the contributions, penalties, and interest due the state from him, give notice of such assessment to the employer, and make demand upon him for payment.

d After a report is filed under the provisions of this chapter and the rules and regulations of the division, the division shall cause the report to be examined and shall make such further audit and investigation as it may deem necessary, and if therefrom there shall be determined that there is a deficiency with respect to the payment of the contributions due from such employer, the division shall assess the additional contributions, penalties, and interest due the state from such employer, give notice of such assessment to the employer, and make demand upon him for payment.

e As an additional remedy, the division may file with the clerk of the superior court a certificate stating the amount of the employer's indebtedness under this chapter and describing the liability, and thereupon the clerk shall immediately enter upon his record of judgments such certificates or an abstract thereof and duly index the same. Such certificate or abstract from the time of filing shall have the same force and effect as a judgment obtained in the superior court and the division shall have all the remedies and may take all the proceedings for the collection thereof which may be had or taken upon the recovery of such a judgment in a civil action at law in said court. Such debt, from the time of

the filing thereof, shall be a lien on and bind the lands, tenements, and hereditaments of the debtor

The clerk of the superior court shall be entitled to receive for filing such certificate 50 cents, and for a certified transcript of such certificate 50 cents. If the amount set forth in said certificate as a debt shall be modified or reversed by any court, the clerk of the superior court shall, when an order of modification or reversal is filed, enter in the margin of the docket opposite the entry of the judgment the word "modified" or "reversed", as the case may be, and the date of such modification or reversal.

The employer, or any other person having an interest in the property upon which the debt is a lien, may deposit the amount claimed in the certificate with the clerk of the superior court, together with \$50.00 to cover interest and the costs of court, or in lieu of depositing the amount in cash, may give a bond to the state of New Jersey in double the amount claimed in the certificate, and file the same with the clerk of the superior court. Said bond shall have such surety and shall be approved in the manner now required by section 27-369 of the Revised Statutes.

After the deposit of said money or the filing of said bond, the employer or any other person having an interest in the said property, may review the legality or validity of the indebtedness or the amount thereof by proceedings in lieu of prerogative writs, and the said deposit of cash shall be as security for and the bond shall be conditioned to prosecute the proceedings with effect and to pay and satisfy, if the debt be sustained, the amount adjudged by the court and all interest and costs.

Upon the deposit of said money or the filing of the said bond with the clerk of the superior court, all proceedings on such judgment shall be stayed until the final determination of the cause, and the moneys so deposited shall be subject to the lien of the indebtedness and costs and interest thereon, and the lands, tenements, and hereditaments of said debtor shall forthwith be discharged from the lien of the state of New Jersey and no execution shall issue against the same by virtue of said judgment.

f If not later than 2 years after the calendar year in which any moneys were erroneously paid to, or collected by the division, whether such payments were voluntarily or involuntarily made or made under mistake of law or of fact, an employer or an employee who has paid such moneys shall make application for an adjustment of his own contribution in connection with subsequent contribution payments, or for a refund of his own contribution because such adjustment cannot be made, and the division or director shall determine that such moneys or any portion thereof was so erroneously paid or collected, such employer or employee shall be allowed to make an adjustment thereof, without interest, in con-

nection with subsequent contribution payments, or if such adjustment cannot be made the said amount shall be refunded, without interest, from the fund. For a like cause and within the same period, adjustment or refund may be so made on the initiative of the division through the director.

g All interest and penalties collected pursuant to this section shall be paid into a special fund to be known as the unemployment compensation auxiliary fund, all moneys in this special fund shall be deposited, administered and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury, and shall be expended, under legislative appropriation, solely for the purpose of aiding in defraying the cost of the administration of this chapter and for essential and necessary expenditures in connection herewith not provided in or by grants of the federal government. The treasurer of the state shall be ex officio the treasurer and custodian of this special fund and, subject to legislative appropriation, shall administer the fund in accordance with the directions of the division. Any balances in this fund shall not lapse at any time, but shall be continuously available, subject to legislative appropriation, to the division for expenditure. The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation auxiliary fund in an amount to be fixed by the division, the premiums for such bond to be paid from the moneys in the said special fund.

43:21-50. Review.

a If a person claiming benefits under an approved private plan shall be unable to agree with the employer or insurer as to benefits thereunder, such claimant may, within 1 year after the beginning of the period for which benefits are claimed, file a complaint with the division of employment security, which shall conduct such investigation, including informal hearings, as it deems proper. Such complaint shall be filed in writing in a form satisfactory to the commission. The division of employment security shall have the authority to make procedural rules and regulations providing for a fair and impartial hearing, and shall designate 1 or more hearing officers. If the issues raised by the complaint are not settled, the hearing officer shall conduct a hearing upon due notice to the claimant, the employer and the insurer, if any, at which any party in interest shall have the right to appear. At such hearing evidence, exclusive of ex parte affidavits, may be produced by any party, but the hearing officer, in conducting the hearing, shall not be bound by the rules of evidence. All proceedings at such hearing shall be recorded, but need not be transcribed unless the order

on the disputed claim is to be reviewed. The hearing officer shall make a determination of facts and an order disposing of the issues presented, which shall be final and binding on the claimant, the employer and the insurer. A copy of such order shall be served upon each of the interested parties by registered mail addressed to their respective last known addresses. Any party in interest feeling aggrieved by action

of the hearing officer may secure judicial review thereof by an appeal to the superior court appellate division after receipt of the hearing officer's order.

b Individuals claiming benefits under the state plan shall be entitled to review hearing and determination as provided in unemployment compensation cases.

Source: P L 1948, c 120, p 607, §26

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Title 44. POOR

44:1-30.3. Recording of certificates; warrant of satisfaction or release. The clerks of the county courts or registers of deeds and mortgages, as the case may be, shall enter on record the said certificates in a book, which he shall provide, to be known as "welfare-house liens" and shall index the same in the indices made and kept for deeds, mortgages and chattel mortgages. No clerk or register shall charge any fee therefor.

Whenever the county welfare board shall have received satisfaction or partial satisfaction of the cost of the care and maintenance provided for in said certificate, the county welfare board shall execute a warrant of satisfaction or release therefrom, which warrants of satisfaction or releases shall be recorded, noted and indexed as are warrants to satisfy or releases of mortgages, without charge, by the clerk or register. L 1940, c 119, p 264, §3

Source: L 1940, c 119, p 264, §3

44:1-55. Compelling county to share expenses and obligations. On failure of any county, through its governing body, to make provision in any manner as required by this chapter or other law for the payment of the expenses and obligations imposed thereby for its proportionate share of the establishment or maintenance of a district welfare-house, the board of chosen freeholders of any county composing the district may appeal to any judge of the superior court, on 10 days' notice to the defaulting or delinquent board of chosen freeholders or any delinquent official thereof, or both, for a mandatory order directing the performance of the actions necessary to accomplish the requisite lawful action and compel the carrying out of its obligations as a county in the proper proportion as to expense and payment as provided in this chapter or any other law. The proceedings shall be summary. Nothing contained in this section, however, shall be construed to interfere with or restrict the use of any proceedings in lieu of a prerogative writ for the purpose or to review the legality of the order.

Source: R S 44 1-55

44:1-86. Determination by overseer as to persons to be relieved by him. The overseer shall determine who are to be relieved by him, subject to appeal by any person, on at least 5 days' notice, to the juvenile and domestic relations court, by complaint, in writing, for a summary review and determination by the court of the action of the overseer as to the extent and amount of relief, if any, to be rendered.

Source: R S 44 1-86

44:1-95. Expenses recoverable from poor person or estate; insurance. If it is ascertained at any time that a person who has been assisted by or has received support from a municipality or county has real or personal property over and above that necessary for his maintenance in whole or in part, if such poor person is maintained by the municipality or county at home, or over and above that sufficient for his family, or if any such person shall die, leaving real or personal property, a civil action may be maintained in the county court of the county by the overseer who has furnished or provided such assistance or support, or any part thereof, against such person or his estate, to recover the sums of money which have been expended by the municipality or county in the assistance and support of the person during the period for which support was furnished, and if a person shall die having received relief or maintenance as a poor person and having insurance upon his life, the proceeds of the insurance after payment of the expense of the last illness and the funeral expenses of the person, if the terms of the policy so permit, shall be first applied to the reimbursement of the county, municipality or district for the cost of the support and maintenance of the person, but no action shall lie, nor shall any appropriation of insurance be made against an estate when it shall be shown to the satisfaction of the court that the proceeds thereof, or the estate, are needed to prevent the widow or minor children of the poor person from becoming dependent upon the public.

Source: R S 44 1-95

44:1-121. Contest; how made. The contest shall be made by notice to the officer giving the original notice, fixing a time and place when the contesting overseer will apply to the county court of the county in which the poor person may be and from which he is to be removed, when and where the court shall hear and determine the controversy. The time shall not be less than 10 nor more than 30 days from the time of giving the original notice.

Source R S 44 1-121

44:1-122. Failure to resist removal; review when failure explained. On failure to resist the removal the receiving overseer may not decline to receive the poor person but shall receive him and provide such relief as is lawful, except that for good cause shown for the failure to contest the removal the receiving overseer may, within 30 days after the receipt of the poor person in the municipality, apply to the county court of the county from whence the person was removed to review the proceeding and make such revised order or judgment and disposition for the care and relief of the poor person and his removal, if lawful, as may be proper and necessary.

Source R S 44 1-122

44:1-123. Liability of municipality failing to receive or remove poor person. If an overseer shall neglect to receive or remove a poor person as provided in this chapter after the determination of the matter by a county court having jurisdiction, the municipality where the neglect occurs shall be liable for the expense of the support and relief of the poor person. The expense shall be recoverable from time to time with costs of suit by the overseer incurring the cost of relief and support in a civil action in any court of competent jurisdiction in the name of the municipality against the municipality liable therefor.

Source R S 44 1-123

44:1-129. Complaint for home relief. The overseer shall by complaint to the county court of the county, setting forth the necessary facts, apply for the person's relief in that manner, whereupon the court shall fix a day and date for hearing the complaint within not less than 10 days from the date of the application.

Source 44 1-129

44:1-130. Summary hearing; order or judgment for home relief. The court shall proceed in a summary manner to examine into the facts, and, upon being satisfied that permanent relief should be furnished to the poor person in the home, shall, in its discretion, order or adjudge a fixed sum not exceeding the rate of \$200 00 per annum for the poor person's maintenance and support in the home for a period of 6 months from the date of the order or judgment.

44:1-131. Continuance of relief. At the expiration of the 6 months' period for which relief is ordered or adjudged, and every succeeding

such period of time thereafter, the overseer may, if further relief is necessary in the case, apply to the court for an order or judgment directing the continuance of the relief for a like period, and that relief shall be payable upon the further order or judgment of the court.

44:1-132. Revocation of order or judgment for relief. The court may in its discretion summarily revoke any order or judgment for such relief made by it, and thereafter all maintenance and relief for the poor person shall cease forthwith.

44:1-141. Compelling support by relatives. If any of the relatives mentioned in section 44 1-140 of this title shall fail to perform the order or directions of the overseer with regard to the support of the poor person, or if the poor person is supported at public expense, the county court or the court of juvenile and domestic relations of the county wherein the poor person has a legal settlement, or the magistrate's court of the municipality wherein the person has a legal settlement, upon the complaint of the overseer of the poor or 2 residents of the municipality or county may summon the persons chargeable before it as in other civil actions, summon witnesses, and order and adjudge that the able relatives pay such sum for each poor person as the circumstances may require in the discretion of the court, and as will maintain him or them and relieve the public of that burden; but nothing contained in this section shall be construed to grant jurisdiction for the trial of any of such cases to a municipal court in a county having a criminal judicial district court; provided, however, where it shall appear that the child or children of a poor person was abandoned and deserted and said poor person failed to support and maintain said child or children during its or their minority, the aforementioned courts or court may revoke the order of the overseer of the poor or reduce the amount of said order against such child or children, in proportion to the actual support and maintenance rendered by said poor person to the child or children sought to be held and any child now under an order to support a poor person may apply to the court which issued said order for the revocation or reduction of said order in accordance with the terms of this proviso. Violation of any such order shall constitute a contempt of court.

The county through its governing body may also bring appropriate action at law in any court of competent jurisdiction to recover any money due for the relief, support and maintenance of a poor person against a person chargeable by law therefor.

Source 44 1-141, as am L 1940, c 55, p 164, §1

44:1-143. Compelling support by husband or wife. When a husband or father shall desert his wife or children or a woman shall desert her child or children and leave them or any of them as public charges, the overseer may apply to the

juvenile and domestic relations court, which court may order and adjudge suitable support and maintenance to be paid and provided by the husband or wife, or either of them, to be made out of his property, and for such time as the nature of the case and circumstances of the parties render suitable and proper in the opinion of the court, and may compel the defendant to give reasonable security for such maintenance and support, and from time to time make such further orders and judgments touching the matter as shall be just, and enforce such orders and judgments

44:1-144. Attachment of estate of person charged and application thereof toward support. The juvenile and domestic relations court may

a Issue process for the immediate attachment of the personal estate and the rents and profits of the real estate of the person charged as provided in section 44 1-143 of this title,

b Appoint the overseer or another person receiver thereof,

c Cause the personal estate and the rents and profits of the real estate, or so much thereof as is necessary, to be applied toward the maintenance and support as to the court shall from time to time seem reasonable and just,

d Enforce such orders and judgments by proceedings as for contempt, and

e Revise and alter such orders and judgments from time to time as circumstances may require

44:1-145. Service and method of procedure. Service in the absence of the person so charged and the method of procedure shall be such as is provided by the rules governing the juvenile and domestic relations court

44:1-146. Recovery of expenses of support. The overseer may bring a civil action from time to time in the juvenile and domestic relations court in the manner in which other civil actions are prosecuted, for the amount necessary to pay any expense incurred or unpaid, and upon recovery of judgment and the sale of any real or personal property of the defendant, the proceeds therefrom shall as in other civil actions be paid to the overseer and be applied by him to the support and maintenance of the deserted persons, or to the reimbursement of the municipality, county or board to the extent of the expenditures made by it for that support and maintenance

The sum realized on execution sale and not immediately used shall be kept by the overseer in a separate account in a national or state bank in the place where the deserted wife or children, or any of them, are placed or maintained. Surplus proceeds not expended for that purpose shall be the property of and payable to the defendant
Source 44 1-146

44:1-147. Willful deserter as disorderly person; punishment. A husband or father who shall willfully desert his wife or children, or any of

them, or a mother who shall willfully desert her children, or a child who shall willfully desert his parents, or any of them, or a husband, father, mother or child who shall refuse or neglect to provide for and maintain a person so deserted or neglected, shall be deemed a disorderly person and upon being so adjudged shall be committed to the workhouse or county jail of the county or of that county composing a district in which the person resided at the time of the desertion or failure to provide, for a period not exceeding 60 days in the discretion of the magistrate or judge

Source R S 44 1-147

44:1-148. Complaint by overseer. When an overseer of the poor having jurisdiction in such cases believes that such desertion or willful refusal or neglect to so provide for any such wife, children or parents, or any of them, will cause the family to become chargeable as poor persons to any county, municipality or joint county district, he shall make complaint thereof under oath before a magistrate or judge having jurisdiction in the municipality, county or district where the persons reside or in the place where the father, husband or child resides

Source R S 44 1-148

44:1-149. Proceedings against deserter as disorderly person. The proceedings against a husband, father, mother or child before the magistrate or judge, including the proceedings for the apprehension and appearance of the person complained of, shall be in the manner provided by the rules governing the practice in the local criminal courts

The proceedings in cases where persons are chargeable as poor for the better relief of the governing body or other authority having the direction and government of the poorhouse, almshouse or welfare-house may be applied by the overseer, director, or a member of the body having charge of the institution, in the manner set forth in section 44 1-148 of this title and in the rules governing the practice in the local criminal courts

Source R S 44 1-149

44:1-150. Recognizance for appearance. A recognizance to the state may be required by the magistrate or judge with good and sufficient surety, to be approved by him in the sum directed on the warrant, conditioned for the appearance of the defendant before the magistrate or judge who issued the warrant, at a time therein to be named, to answer the complaint, and abide all orders, and judgments that may be made against the defendant touching the complaint

Source R S 44 1-150

44:1-151. Jurisdiction of proceedings to compel support. The county court or juvenile and domestic relations court in the county where the defendant resides or where the complaining witness resides shall have jurisdiction in or concern-

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ing a complaint or proceeding instituted by an overseer of the poor or superintendent of outdoor relief, or any other public officer having jurisdiction, which proceeding has for its object the recovery of support for an indigent wife or children, or in any other proceeding for the relief of the poor. This section shall not affect the jurisdiction of municipal courts, or criminal judicial district courts

Source R S 44 1-151

44:4-40. Determination by director of relief to be granted; review. The director of welfare, under the direction, and subject to the approval of the county welfare board shall determine who are to be relieved by him, subject to appeal by any person on at least 5 days' notice, to the juvenile and domestic relations court of the county, by complaint, in writing, for a summary review and determination by the court of the action of the director of welfare as to the extent and amount of relief, if any, to be given or rendered

Source R S 44 4-40

44:4-72. Removal of poor person to place of legal settlement procedure. When the removal of a poor person from the place of his domicile or where he is found to the place of his settlement in the same county is lawful and necessary, it shall be made by means of a written notice signed by the director of welfare of the county to the governing body having jurisdiction in the place to which such person is to be removed, that on a day certain, not less than 10 nor more than 12 days after the date and mailing of the notice, an order will be made by the director of welfare that the poor person be removed to the place of his settlement, stating the reasons therefor, the place of his settlement or the place where he became poor prior to his becoming an inhabitant of the municipality from whence he is to be removed

On the day named in the notice, the order for removal shall be made by the director of welfare of the county, and thereafter the poor person shall forthwith be removed by the director of welfare to the place indicated in the notice upon the making of an order that the poor person has no settlement in the municipality in which he is a resident or is found, and has a settlement or became poor in the other municipality in the same county prior to his becoming a resident and inhabitant or being found in the municipality from whence he is to be removed, unless within 10 days after the mailing of the written notice the governing body to whom it shall have been mailed shall proceed to contest the allegation of the settlement of the poor person or of the right to remove him to the municipality in which it has jurisdiction

The contest shall be made by notice to the director of welfare giving the original notice, fixing a time and place when the governing body shall apply to the county court of the county in which the poor person may be when and where

the court shall hear and determine the controversy, which time and place shall not be less than 10 or more than 30 days from the time of giving the original notice thereof

On failure to resist the removal by the receiving municipality the receiving municipality may not contest receiving the poor person, and he shall be removed by the county welfare director at the cost and expense of the municipality from which he is removed, out of the appropriation made by the municipality for the relief of the temporary or outdoor poor of the municipality, but for good cause shown for the failure to contest the removal the receiving municipality may, within 30 days after the receipt of the poor person in its municipality, apply to the county court of the county to review the proceeding and to make such revised order and disposition for the care and relief of the poor person and his removal, if lawful, as may be proper and necessary

Source R S 44 4-72

44:4-76. Contest; how made. Such contest shall be made by notice to the officer giving the original notice, fixing a time and place when the contesting county welfare board, through the director of welfare, or the overseer or county adjuster as the case may be will apply to the county court of the county in which the poor person may be and from which he is to be removed when and where the court shall hear and determine the controversy, which time and place shall not be less than 10 or more than 30 days from the time of giving the original notice

Source R S 44 4-76

44:4-77. Failure to resist removal; review when failure explained. On failure to resist such removal the receiving county welfare board or overseer or county adjuster, as the case may be, may not decline to receive the poor person, but shall receive him and provide such relief as is lawful, except that for good cause shown for the failure to contest the removal the receiving county welfare board or overseer or county adjuster, as the case may be, may, within 30 days after the receipt of the poor person in its county, apply to the county court of the county from whence the person was removed, to review the proceeding and make such revised order and disposition for the care and relief of the poor person and his removal, if lawful, as may be proper and necessary.

Source R S 44 4-77

44:4-91.2. Filing certificate of costs of care furnished; judgment lien; execution. At any time the county welfare board may execute and file with the clerk of the county court or register of deeds and mortgages, as the case may be, a certificate, in the form prescribed by section 44 7-15 of the Revised Statutes showing the amount of the cost of the care and maintenance of any person at the county welfare house or for the permanent outdoor support furnished to any

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person, and when so filed each certificate shall be a legal claim against both the person and his estate and shall have the same force and effect as a judgment at law, with priority over all unsecured claims except funeral expenses not to exceed \$150 00. No levy shall be made upon the real estate while it is occupied by the widow or widower, as the case may be. An execution issued on such claim shall take the form of executions issuing out of the common pleas court. If the proceeds of sale of any personalty or real estate, as herein provided, exceeds the total amount paid for care and maintenance under this chapter, such excess shall be returned to such person, or in the event of his death such excess shall be considered as the property of the deceased for proper administration proceedings. All funds reclaimed under these provisions shall be returned to the county.

Source P L 1946, c 175, p 762, §1

44:4-91.3. Record of welfare house and outdoor liens. The clerks of the county courts, or register of deeds and mortgages, as the case may be, shall enter on record in a book to be known as "welfare house and outdoor liens" the said certificates, and shall make a complete alphabetical index of the same, and no clerk or register shall charge any fee therefor. Whenever a county shall have received satisfaction for such judgments, the county welfare board shall enter an acknowledgment of satisfaction upon the record of such judgments without charge.

Source P L 1946, c 175, p 762, §1

44:4-102. Compelling support by relatives. If any of the relatives mentioned in section 44 4-101 of this title shall fail to perform the order or directions of the director of welfare with regard to the support of the poor person, or if the poor person is supported at public expense, the county court or the court of juvenile and domestic relations court of the county wherein the poor person has a legal settlement, upon the complaint of the director of welfare or 2 residents of the county may summon the persons chargeable before it as in other civil actions and summon witnesses, and may order and adjudge the able relatives to pay such sum as the circumstances may require in the discretion of the court for each poor person, as will maintain and relieve him or them, and as will relieve the public of the burden of such care and maintenance, provided, however, where it shall appear that the child or children of a poor person was abandoned and deserted and said poor person failed to support and maintain said child or children during its or their minority, the county court or the court of juvenile and domestic relations court may revoke the order of the director of welfare or reduce the amount of said order against such child or children, in proportion to the actual support and maintenance rendered by said poor person to the child or children sought to be held and any child, now under an order to sup-

port a poor person may apply to the court which issued said order for the revocation or reduction of said order in accordance with the terms of this proviso. Violations of any such order of the court shall constitute a contempt of court.

The county through its governing body may also bring appropriate civil action at law to recover any sum of money due for the relief, support and maintenance of any poor person against any person chargeable by law therefor. Source. R S 44 4-102, as am P L 1940, c 56, p 166, §1

44:4-104. Compelling support by husband or wife. When a husband or father shall desert his wife or children or a woman shall desert her child or children and leave them, or any of them, as public charges, the director of welfare may apply to the juvenile and domestic relations court of the county, which court may order and adjudge suitable support and maintenance to be paid and provided by the husband or wife, or either of them, to be made out of his property, and for such time as the nature of the case and circumstances of the parties render suitable and proper in the opinion of the court, and may compel the defendant to give reasonable security for such maintenance and support, and from time to time make such further orders and judgments touching such maintenance and support as shall be just, and enforce such orders and judgments.

44:4-105. Attachment of estate of person charged and application thereof toward support. The juvenile and domestic relations court may

a Issue process for the immediate attachment of the personal estate and the rents and profits of the real estate of the person charged as provided in section 44 4-104 of this title,

b Appoint the director of welfare, or another person, receiver thereof,

c Cause the personal estate and the rents and profits of the real estate, or so much thereof as is necessary, to be applied toward the maintenance and support as to the court shall from time to time seem reasonable and just,

d Enforce such orders and judgments by proceedings as for contempt, and

e Revise and alter such orders and judgments from time to time as circumstances may require

44:4-106. Service and method of procedure. Service in the absence of the person so charged and the method of procedure shall be such as is provided by the rules governing the juvenile and domestic relations court.

44:4-107. Recovery of expenses of support. The county welfare board through the director of welfare, may bring a civil action at law from time to time in that court, in the same manner as civil actions are prosecuted, for such amount as may be necessary to pay any expense incurred or unpaid, and upon recovery of judgment and the sale of any property, real or personal, of the defendant, the proceeds realized there-

from as in other civil actions shall be paid to the county welfare board and applied by it for the support and maintenance of the deserted persons, or to reimburse the county or welfare board to the extent of the expenditures made by it for such support and maintenance

The sum realized on execution sale and not immediately used shall be kept by the county welfare board in a separate account in a national or state bank in the place where the deserted wife or children or any of them, are placed or maintained. All surplus proceeds not expended for that purpose shall be the property of and payable to the defendant

Source R S 44 4-107

44:4-108. Willful deserter as disorderly person; punishment. A husband or father who shall willfully desert his wife or children, or any of them, or a mother who shall willfully desert her children, or a child who shall willfully desert his parents, or any of them, or a husband, father, mother or child who shall fail to provide for and maintain any such person so deserted or neglected, shall be deemed a disorderly person and upon being so adjudged shall be committed to the workhouse or county jail of the county in which the person resided at the time of the desertion, for a period not exceeding 60 days in the discretion of the magistrate or judge

Source R S 44 4-108

44:4-109. Complaint by director of welfare. When a director of welfare otherwise having jurisdiction in such cases believes that such desertion or willful refusal or neglect to so provide for any such wife, children and parents, or any of them, will cause the family to become chargeable as poor persons to any county, he shall make complaint thereof under oath before a magistrate or judge having jurisdiction in the county where the persons reside or in the place where the offending husband, father, mother or child resides

Source R S 44 4-109

44:4-110. Proceedings against deserter as disorderly person. The proceedings against a husband, father, mother or child before the magistrate or judge including the proceedings for the apprehension and appearance of the person complained of, shall be in the manner provided by the rules governing practice in the local criminal courts

The proceedings in cases where persons deserted are chargeable as poor may be applied for by the county welfare board through its agents in the manner set forth in section 44 4-109 of this title and in the rules governing practice in the local criminal courts

Source R S 44 4-110

44:4-111. Recognizance for appearance. A recognizance to the state may be required by the magistrate or judge with good and sufficient surety to be approved by him in the sum directed on the warrant, conditioned for the appearance of the defendant before the magistrate who is-

sued the warrant, at a time therein to be named, to answer the complaint, and abide all orders and judgments that may be made against the defendant touching the complaint

Source R S 44 4-111

44:7-14. Recipient to pledge property; assignment; dower and curtesy, release of; filing of notice; lien.

a Every county welfare board shall require, as a condition to granting assistance in any case, that all or any part of the property, either real or personal, of a person applying for old age assistance, be pledged to said county welfare board as a guaranty for the reimbursement of the funds so granted as old age assistance pursuant to the provisions of this chapter. The county welfare board shall take from each applicant a properly acknowledged agreement to reimburse for all advances granted, and pursuant to such agreement, said applicant shall assign to the welfare board, as collateral security for such advances, all or any part of his personal property as the board shall specify

The agreement to reimburse shall provide that the filing of notice thereof as hereinafter provided, is to have the same force and effect as a judgment at law, it shall contain therein a release of dower or curtesy, as the case may be, of the spouse of the recipient of old age assistance, and the spouse shall agree to reimburse the county welfare board for all advances made to the recipient, and such release and joinder shall be as valid and effectual as if the spouse had joined the recipient in a conveyance of the property to a third person, the grant of old age assistance being contingent upon such joinder by the spouse, shall be good and valuable consideration therefor. Old age assistance shall not be granted to any applicant without joinder by the spouse in the agreement to reimburse except upon the showing of good and sufficient cause as the state division shall by regulation define

b Upon making a grant of old age assistance the county welfare board shall file with the clerk of the county court or register of deeds and mortgages, in any county, a notice of the above-mentioned agreement to reimburse, which notice as of the date of such filing, shall have the same effect as a lien by judgment, and any real estate or lands in which the recipient or spouse has a title or interest, shall thereupon become charged and encumbered with a lien for old age assistance granted the recipient and said notice shall have priority over all unrecorded encumbrances. No fees or costs shall be paid for filing such notices

Source R S 44 7-14, as am L 1943, c 164, p 478, §5, L 1945, c 273, p 808, §1

44:7-16. Record of reimbursement agreements; satisfaction. The clerks of the county courts, or registers of deeds and mortgages as the case may be, shall enter on record in a book to be known as "reimbursement agreements" the said certificates, and shall make a complete alpha-

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betical index to the same, and no clerk or register shall charge any fee therefor. Whenever a county shall have received satisfaction for such judgments, the county welfare board shall enter an acknowledgment of satisfaction upon the record of said judgments, without charge.

44:7-19. Assistance by relatives; enforcement; contempt and other remedies available. The director of welfare in cases of application for old age assistance shall ascertain, if possible, the relatives and other persons chargeable by law for the support of such applicant, and proceed to obtain their assistance for such applicant or to compel them to render such assistance as is provided by law in such cases, or if such relatives or other persons are not chargeable by law with the support of such applicant but able and willing to do so, in whole or in part, the director of welfare may contract, in writing, with such persons for the support of such applicant.

Should any relative or other person responsible for the support of an applicant for old age assistance fail to perform the order or direction of the director of welfare with regard to the support of such applicant, the county court or the court of juvenile and domestic relations of the county wherein such applicant has applied or is receiving old age assistance, may, upon certification in writing of the director of welfare or of 2 residents of the municipality or county, subpoena or otherwise direct the appearance of the persons chargeable before it and subpoena witnesses, and compel the production of books, records, and other documents as may be pertinent, and shall, in a summary way, inquire into the cause of such failure to perform the order or direction of the director of welfare, and may order and adjudge the able relatives or other persons responsible for the support of such applicant to pay such sum or to deliver to the court or to the director of welfare such other pledge or guaranty as the circumstances may require in the discretion of the court for each such applicant, provided, however, where it shall appear that the child or children of an applicant for old age assistance was abandoned and deserted and said applicant failed to support and maintain said child or children during its or their minority, the county court or juvenile and domestic relations court may revoke the order of the director of welfare or reduce the amount of said order against such child or children, in proportion to the actual support and maintenance rendered by said applicant to the child or children sought to be held and any child now under an order to support an applicant for old age assistance may apply to the court which issued said order for the revocation or reduction of said order in accordance with the terms of this proviso. Violation of any such order of the court shall be a contempt of said court and the person so violating shall be subject

to all the pains and penalties which by law may be imposed for other contempts of such courts.

The jurisdiction of the county court or juvenile and domestic relations court in matters coming within the purview of sections 44 7-19 and 44 7-20 shall not be limited to the territorial confines of the county wherein said court is established, but said court shall exercise jurisdiction for such purposes in each of the several counties of this state and is empowered to compel the attendance of responsible relatives and other witnesses residing without the county and to make such orders, with respect to such persons, as are consistent with this title.

The county welfare board may also bring appropriate civil action in any court of competent jurisdiction to recover any sum of money due for assistance given any person under this chapter against such person or against any other persons chargeable by law for the support of such person.

Source R S 44 7-19, as am L 1940, c 57, p 167, §1, L 1943, c 164, p 479, §7

44:7-20. Director's power to issue subpoenas; court subpoena in certain cases; contempt; perjury. For the purpose of ascertaining and determining the facts and circumstances concerning any application for assistance made under this chapter the director of welfare shall have power, in his discretion, to compel the attendance of the applicant and other persons in this state and the production of books, records and other documents in this state pertinent to such examination. The director of welfare may administer oaths or affirmations for the purpose of such examination. Upon any disobedience to or neglect of any subpoena issued to an applicant by the director, or any refusal to testify by the applicant, the director may, in his discretion, subject to the approval of the county welfare board, reject the application for assistance. Any disobedience to, or neglect of, any subpoena issued to any other person by the director or any refusal to testify by any such other person, shall be certified in writing by the director to the judge of the county court of the county in which such disobedience, neglect, or refusal occurred, who shall thereupon, direct the person so disobeying, neglecting, or refusing to show cause why he should not be held in contempt and upon the return date, or any adjourned date shall, in a summary way, inquire into the cause of such disobedience, neglect, or refusal, and if found guilty the judge shall order the detention in such common jail of such person for such a period of time, not exceeding 90 days, as the judge shall designate, or until such person shall purge himself of such disobedience, neglect, or refusal.

Any applicant or other person who shall knowingly give false testimony before the director shall be guilty of a misdemeanor.

Source R S 44 7-20, as am L 1938, c 361, p 912, §14

44:7-15. Official record of grant; filing; effect;

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proceedings for collection and satisfaction; levy; disposition of proceeds; voluntary conveyance. At any time the county welfare board may execute and file with the clerk of the county court or register of deeds and mortgages, a certificate, in form to be prescribed by the state division, showing the amount of assistance advanced to said person, and when so filed each certificate shall be a legal claim against both the recipient and his spouse with the same force and effect as a civil judgment, with priority over all unsecured claims except burial and funeral expenses not to exceed \$200 00

Where the above-mentioned certificates are filed with the clerk of the county court, subsequent proceedings for the collection and satisfaction of the judgment, including issuance of execution, shall conform to the practice prevailing in the court. In counties where the above-mentioned certificates are filed with the register of deeds and mortgages, the register, upon request of the county welfare board, shall execute and file with the clerk of the county court certified copies of the certificates herein described, which shall be filed in the judgment records of the court, and shall have the same force and effect as a civil judgment in that court, and may subsequently be docketed in the superior court of New Jersey where lands are situate in several counties

No levy shall be made upon the real estate while it is occupied by the widow or widower, as the case may be. If the proceeds of the sale of any personalty or real estate, under the terms of this chapter, exceed the total amount paid as assistance under this chapter, such excess shall be returned to said person, and in the event of his death such excess shall be considered as the property of the deceased for proper administration proceedings. All funds reclaimed under these provisions shall be reimbursed to

the county, state and federal government, in the same proportion as it was contributed

The county welfare board shall be empowered to accept voluntary conveyance of real or personal property in lieu of issuance of execution. All real property acquired by execution sale or voluntary conveyance may be disposed of at public sale, or by sale on sealed bids in the discretion of the county welfare board, after public advertisement at least once a week for 2 weeks prior to the sale, in a newspaper published in the county, provided, however, that the terms, conditions and consideration for such sale shall be first approved by the state division of old age assistance, of the department of institutions and agencies. The county welfare board is hereby authorized and empowered to execute and deliver any and all documents necessary to convey title to a purchaser of such real or personal property, in exacting the same manner as any other corporate entity. As amended L 1945, c 273, p 809, §2, L 1947, c 370, p 1183, §1, L 1949, c 247, p , §2

44:8-141. Blank

44:8A-28. Commissioner may apply for court order; violation of order. The commissioner may apply to the county court of the county wherein such person has legal settlement for an order directing the responsible municipality and its director of welfare to furnish assistance to the person in such manner as the court shall direct. Such order may be obtained upon 5 days' notice to the municipality responsible for such assistance and to its director of welfare. Violation of any such order of the county court shall be a contempt of said court and the person so violating shall be subjected to all penalties which by law may be imposed for other contempts of such court

Source P L 1941, c 357, p 937, §28, as am L 1947, c 120, p 589, §9

PROPOSED REVISION

Title 45. PROFESSIONS AND OCCUPATIONS

45:3-8. Revocation of certificates; hearing. Any certificate granted by the board may be revoked or suspended by it for gross ignorance, recklessness, incompetency, dishonest practices, or other good and sufficient reasons, but before any certificate shall be revoked or suspended, the holder shall be entitled to at least 20 days' notice of the charge against him and of the time and place of the meeting of the board for the hearing and determination of such charge. For such purpose the board shall have the powers of a court of record sitting in the county in which its meeting shall be held, to issue subpoenas and to compel the attendance and testimony of witnesses, who

shall be entitled to the same fee as is allowed in the superior court, to be paid in like manner. The accused shall be entitled to the subpoena of the board for his witnesses, and a reasonable opportunity to produce them, and to be heard in person, or by counsel, in open public trial. Any member of the board may administer oaths and conduct the examination of witnesses under oath, and no certificate shall be revoked or suspended except upon the unanimous vote of all the members of the board. Any such revocation or suspension shall be certified in writing by the board under the hand of its president, or its president for the time being, and attested

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by the secretary, under the official seal of the board, and such certificate shall be filed in the office of the secretary of state, who shall be paid the usual fee for filing similar documents in his office As amended L 1943, c 75, p 286, §1

Approved and effective April 6, 1943

45:3-9. Certified copies of certificates as evidence; refusal or revocation of certificates reviewable by court. A copy of any certificate granted by the board, or of any revocation or suspension thereof, as by this chapter provided, certified by the secretary of state under his hand and seal to be a true copy of the original filed in his office, shall be competent and plenary evidence to prove the facts contained therein, to the same extent as if the original document had been produced and proved in any court of civil or criminal jurisdiction Any person whose certificate is refused or revoked or suspended by the board shall have the right to review such action by a proceeding in lieu of a prerogative writ, and the board shall forthwith carry out the judgment given on such review As amended L 1943, c 75, p 287, §2

45:3-11. Court proceedings for recovery of penalties. Every county district court and every county court in any county is hereby empowered to issue process at the suit of the board, as plaintiff, for the recovery of any penalty imposed for the violation of any provision of this chapter Such process shall be either in the nature of a summons or warrant

45:3-12. Commitment of defendant for non-payment of judgment. The court shall, if judgment be rendered for the plaintiff, cause any such defendant who may refuse or fail forthwith to pay the amount of the judgment rendered against him and all cost and charges incident thereto, to be committed to the county jail for any period not exceeding 60 days, except in cases where the penalty is \$200 00 or more, in which case commitment shall be made for a period not exceeding 90 days

45:3-13. Blank

45:3-14. Blank.

45:3-15. Costs. The costs recoverable in any such proceeding shall be the same as costs taxed in actions in said courts, and shall be recoverable by the board in the event of the conviction of the defendant

45:4-55. Penalties; jurisdiction of offenses; summary proceedings; process; judgment; disposition of penalties. Penalties Any person, corporation or their agents, violating any of the provisions of this act, shall be liable to a penalty of not less than \$5 00 nor more than \$100 00, and for the second and each subsequent offense to a penalty of not less than \$50 00 to be recovered by and in the name of the New Jersey state board of barber examiners Any person,

corporation or their agents violating the provisions of section 26 of this act shall be liable to a penalty of not less than \$5 00 nor more than \$100 00 and for the second and each subsequent offense to a penalty of not less than \$50 00, to be recovered by the New Jersey state board of barber examiners Every county district court and municipal court is hereby empowered to issue process at the suit of the New Jersey state board of barber examiners for the recovery of such penalty Such process shall be either in the nature of a summons or warrant

The court shall, if judgment be rendered for the plaintiff, cause any such defendant who may refuse or neglect to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for any period not exceeding 100 days

Any penalty recovered in any action brought under the provisions of this act shall be paid to the plaintiff therein for the use of the township, city, borough, town or other local municipal government within which the violation occurred L. 1938, c 197, p 470, §29

45:4A-17. Appeal from actions of department. An appeal may be taken from any actions of the department to the county court of the county wherein the defendant resides

45:4A-24. Enforcement of act; penalties for violation; jurisdiction and process; summary trial; judgment; adjournment of hearing or trial; appearance bond. The board of beauty culture control of the state of New Jersey shall have power to enforce this act and any person, partnership or corporation violating this act shall forfeit and pay a penalty of not less than \$25 00 nor more than \$50 00 for the first offense, not less than \$50 00 nor more than \$100 00 for the second offense, and not less than \$100 00 for the third and each subsequent offense, to be sued for and recovered by and in the name of the board of beauty culture control of the state of New Jersey.

Every county district court and every county court in any county is hereby empowered to issue process at the suit of the board of beauty culture control of the state of New Jersey as plaintiff for the recovery of any such penalty Such process shall be either in the nature of a summons or warrant The court shall, if judgment be rendered for the plaintiff, cause any such defendant, who may refuse or neglect to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for any period not exceeding 100 days

45:4A-30. Blank

45:5-11. Unlawful acts; penalty; display of name; recovery of penalties. Whoever practices chiropody in this state without first having obtained and filed the license herein provided for,

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or contrary to any of the provisions of this chapter, or whoever practices chiropody under a false or assumed name, or falsely impersonates another practitioner of a like or different name, or buys, sells, or fraudulently obtains any diploma as a chiropodist, or any chiropody license, record or registration, or aids or assists any person not regularly licensed and registered to practice chiropody in this state, to practice chiropody therein, or whoever violates any of the provisions of this chapter, shall be liable to a penalty of \$200 00, which penalty shall be sued for and recovered by and in the name of the board

Every person practicing chiropody and every person practicing chiropody as an employee of another shall cause his name to be conspicuously displayed and kept in a conspicuous place at the entrance of the place where such practice shall be conducted, and any person who shall neglect to cause his name to be displayed as herein required shall be liable to a penalty of \$100 00

Using the title doctor or its abbreviation in the practice of chiropody must be qualified by the word or words "chiropodist" or "surgeon chiropodist" Any person who violates this provision shall be liable to a penalty of \$100 00

It shall be unlawful for any person not licensed under this act to use terms, titles, words or letters which would designate or imply that he or she is qualified to treat foot ailments, or to hold himself or herself out as being able to diagnose, treat, operate, or prescribe for any ailment of the human foot, or offer or attempt to diagnose, treat, operate or prescribe for any ailment of the human foot

The penalties provided for by this section shall be sued for and recovered by and in the name of the state board of medical examiners of New Jersey

Every county district court and every county court in any county is hereby empowered to issue process at the suit of the board as plaintiff for the recovery of any such penalty Such process shall be either in the nature of a summons or a warrant

45:5-12. Commitment of defendant for non-payment. The court shall, if judgment be rendered for the plaintiff, cause any such defendant who refuses or neglects to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for a period of not less than 10 days and not exceeding 100 days

45:5-13. Repeal See Rule 7 12A.

45:5-14. Repeal See Rule 7 12A

45:5-15. Penalty for further violations; recovery; disposition of penalties. In case any person shall, after conviction of any violation of this chapter, be again convicted of another violation thereof or of continuing the violation for

which he was previously convicted, he shall be liable to a penalty of \$500 00 for each such violation or continuation to be sued for and recovered in the manner above set forth In case any defendant against whom judgment has been recovered for a penalty of \$500 00 shall fail or neglect to forthwith pay such penalty, the court shall commit him to jail in the manner above set forth, for any period of not less than 30 days and not exceeding 200 days.

Any penalty recovered for any violation of this chapter shall be paid to the board, which shall pay one-half thereof to any incorporated chiropodist or medical society procuring the evidence upon which the defendant was convicted The other half shall be applied by the board to the same purposes as other funds of the board collected in accordance with the provisions of this chapter

45:5-16. Costs. The costs recoverable in any such proceeding shall be the same as costs fixed in actions in said courts, and shall be recoverable by the board in the event of conviction of the defendant

45:5-17. Restraining unlawful practice; equity jurisdiction; exceptions. The superior court may at the suit of the attorney general or of the said board prevent and restrain the practice of chiropody in this state by any person who has not first obtained and filed the license herein provided for, or the violation by any person of the provisions of this act; or of the practice of chiropody by any person under a false or assumed name, or the false presentation of another practitioner of a like or different name, or for practicing chiropody under any name, title or heading other than that under which he or she has a license to practice chiropody This section shall not apply nor shall it in any manner be construed to apply to persons practicing healing by spiritual or religious means if no material medicine is prescribed or used and no manipulation or material means are used

45:6-9. Blank

45:6-25. Court proceedings for recovery of penalties. Any penalty incurred by violation of any provision of this chapter, except by any violation specifically made a misdemeanor by this chapter, shall be sued for and recovered by, and in the name of the board. Every county district court and every county court in any county is hereby empowered to issue process at the suit of the board, as plaintiff for the recovery of any such penalty Such process shall be either in the nature of a summons or a warrant

45:6-26. Commitment of defendant for non-payment; bond. The court shall, if judgment be rendered for the plaintiff, cause any defendant

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who refuses or fails to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for a period of not less than 30 days nor more than 90 days, except in cases where the penalty is \$500 00, in which cases commitment shall be made for a period of not less than 60 days nor more than 150 days

45:6-27. Blank

45:6-28. Blank

45:6-29. Costs. The costs recoverable in any such proceeding shall be the same as costs taxed in actions in said courts, and shall be recoverable by the board in the event of the conviction of the defendant

45:6-29.1. Injunction against violation of chapter. The superior court may at the suit of the attorney general or of the state board of registration and examination in dentistry prevent and restrain the practice of dentistry in this state by any person who has not first obtained the license as provided by chapter 6 of Title 45, or the violation by any person of the provisions of chapter 6 of Title 45, or of the practice of dentistry by any person under a false or assumed name; or the false presentation of another practitioner of a like or different name, or the employment of or giving aid or assistance to any person not regularly licensed to practice dentistry by any person, firm or corporation L 1942, c 78, p 320, §1

45:6-46. Recovery of penalties; jurisdiction of courts. Any penalty incurred by violation of any provision of this act, except by any violation specifically made a misdemeanor, shall be sued for and recovered by and in the name of the board Every county district court and every county court in any county, shall have jurisdiction of actions brought under the provisions of this act, except the provisions regarding misdemeanor L 1948, c 34, p 107, §14

45:7-8. Penalty for disobedience of subpoenas; court proceedings to enforce compliance with subpoenas. The penalty for disobedience to the command of a subpoena shall be the same as the penalty for the disobedience of a subpoena to attend before the superior court, and which penalty may be recovered by action against the witness brought in the name of the board in any court having jurisdiction of actions for a penalty, and if a person subpoenaed to attend before the board, or a member thereof designated by the board, or if a person in attendance refuses to be examined or to answer a legal and pertinent question or to produce a book or paper when ordered so to do by the board, the board may apply to the superior court for an order to examine under oath the person whose testimony may be relevant and such person shall be given an opportunity to be heard and if the court or

justice determines that such person refused, without legal excuse, to obey the command of such subpoena or to be examined or to answer a legal or pertinent question or to produce a book or paper which he was ordered to produce, said court or justice may order said person to comply forthwith with the subpoena or order of the board Any failure to obey such order of the court may be punished by the court as a contempt of such superior court

45:7-22. Penalty for violations; court proceedings for recovery. Any person, firm or corporation who shall violate any of the provisions of this chapter, except where a penalty is otherwise herein specifically provided, shall be subject to a penalty of \$100 for the first offense and for the second and each subsequent offense as hereinafter provided, and any penalty incurred by violation of any provision of this chapter shall be sued for and recovered by and in the name of the board Every county district court and every county court is hereby empowered to issue process at the suit of the board as plaintiff for the recovery of such a penalty The process shall be in the nature of a summons

45:7-23. Commitment of defendant for non-payment. The trial shall proceed with or without a jury as the defendant may desire The court shall, if judgment be rendered for the plaintiff, cause any such defendant, who refuses or neglects to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for any period not exceeding 100 days

45:7-24. Blank

45:7-25. Blank

45:7-26. Penalty for further violations; recovery; disposition of penalties. If a person shall, after conviction of any violation of this chapter, be again convicted of another violation thereof or of continuing the violation for which he was previously convicted, he shall be liable to a penalty of \$500 for each such violation or continuation, to be sued for and recovered in the manner above set forth In case a defendant against whom judgment has been recovered for a penalty of \$500 shall fail to forthwith pay the amount of said penalty, the court shall commit him to jail in the manner above set forth, for any period not exceeding 200 days Any penalty recovered for any violation of this chapter shall be paid to the board and shall be applied by it to the same purposes as other funds of the board collected in accordance with the provisions of this chapter

45:7-27. Costs. The costs recoverable in any such proceeding shall be the same as costs taxed in actions in said courts, and shall be recovered by the board in the event of the conviction of the defendant

45:8-31. Oath of members; filing; duty of attorney general; powers of board; contempt for refusal to obey subpoenas. Each member of the examining board before entering upon the duties of his office, shall subscribe to an official oath of office as provided by section 41 1-3 of the title Oaths and Affidavits of the Revised Statutes, which oath shall be filed in the office of the secretary of state

The examining board shall be entitled to the services of the attorney general in connection with the affairs of the board and the board shall have power to compel the attendance of witnesses, and any member thereof may administer oaths and the board may take testimony and proofs concerning any matters within its jurisdiction

The board shall adopt and have an official seal

In carrying into effect the provisions of this chapter, the board may, under the hand of its president and the seal of the board, subpoena witnesses and compel their attendance, and also may require the production of books, papers, documents, et cetera, in a case involving the revocation of license or practicing or offering to practice without license. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, papers or documents, the board may present its petition to the superior court setting forth the facts, and thereupon such court shall, in proper case, issue a subpoena to such person, requiring attendance before such court and there to testify or to produce such books, papers and documents as may be deemed necessary and pertinent to the board. Any person failing or refusing to obey the subpoena or order of said court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of the said court

45:9-22. Illegal practice; names of members of firm and of employees of others to be displayed; penalties, recovery of. Any person commencing or continuing the practice of medicine and/or surgery in this state without first having obtained a license, as provided in this article, or contrary to any of the provisions of this article, or who practices medicine and/or surgery under a false or assumed name, or falsely impersonates another practitioner of a like or different name, or buys, sells or fraudulently obtains a diploma as a doctor of medicine and/or surgery or any branch thereof, or method of treatment of human ailment, disease, pain, injury, deformity, mental or physical condition or a license to practice medicine and/or surgery, record or registration pertaining to the same, or any person, company or association who shall employ for a stated salary or otherwise, or aid or assist any person not regularly licensed to practice medicine and/or surgery in this state, to practice medicine and/or surgery therein, or who violates any of the provisions of this chapter, shall be liable to

a penalty of \$200, which penalty shall be recovered as hereinafter provided. Every person violating any of the foregoing provisions of this section shall be subject to a penalty of \$200 for the first offense. Every person practicing medicine and/or surgery under a firm name and every person practicing medicine and/or surgery or as an employee of another shall cause his name to be conspicuously displayed and kept in a conspicuous place at the entrance of the place where such practice shall be conducted, and any person who shall neglect to cause his name to be displayed as herein required, shall be liable to a penalty of \$100. The penalties provided for by this section shall be sued for and recovered by and in the name of the state board of medical examiners of New Jersey. Every county district court and every county court is hereby empowered to issue process at the suit of the board as plaintiff for the recovery of any such penalty. The process shall be either in the nature of a summons or a warrant.

45:9-23. Commitment of defendant for non-payment. If judgment be rendered for the plaintiff the court shall cause any defendant, who refuses or neglects forthwith to pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for a period of not less than 10 days and not exceeding 100 days

45:9-24. Blank

45:9-26. Penalty for further violations; commitment for failure to pay penalty; disposition of penalties. In case a person shall, after conviction of any violation of this chapter, be again convicted of another violation thereof or of continuing the violation for which such offender was previously convicted, such offender shall be liable to a penalty of \$500 for each such violation or continuation, to be sued for and recovered in the manner above set forth. In case any defendant against whom judgment has been recovered for a penalty of \$500 shall fail or neglect to forthwith pay the amount of said penalty, the court shall commit him to jail in the manner above set forth, for a period of not less than 30 days and not exceeding 200 days. A penalty recovered for any violation of this chapter shall be paid to the state board of medical examiners

Approved July 1, 1939 Effective July 31, 1939

45:9-27. Costs. The costs recoverable in any such proceeding shall be the same as costs taxed in actions in said courts, and shall be recovered by the board in the event of the conviction of the defendant

45:9-27.1. Injunction to restrain certain acts.

The superior court may at the suit of the attorney general or of the state board of medical examiners to prevent and restrain the practice

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of medicine and/or surgery in this state by any person who has not first obtained and filed the license herein provided for, or the violation by any person of the provisions of this act, or of the practice of medicine and/or surgery by any person under a false or assumed name, or the false presentation of another practitioner of a like or different name, or the employment of or giving aid or assistance to any person not regularly licensed to practice medicine and/or surgery as a contempt of such court

Approved July 1, 1939 Effective July 31, 1939

45:10-10. Penalty for illegal practice; court proceedings for recovery. Whoever practices midwifery in this state without complying with the provisions of this chapter shall be liable to a penalty of \$200 00, which penalty shall be sued for and recovered by and in the name of the board. Every county district court, and every county court is hereby empowered to issue process at the suit of the board as plaintiff for the recovery of any such penalty. Such process shall be either in the nature of a summons or a warrant.

45:10-11. Commitment of defendant for non-payment. The court shall, if judgment be rendered for the plaintiff, cause any defendant, who refuses or neglects to forthwith pay the amount of the judgment rendered against her and all the costs and charges incident thereto, to be committed to the county jail for a period not exceeding 100 days.

45:10-12. Blank

45:10-13. Blank

45:10-14. Penalty for further violations; recovery; disposition of penalties. In case a person shall, after conviction of any violation of this chapter, be again convicted of another violation thereof or of continuing the violation for which she was previously convicted, she shall be liable to a penalty of \$500 00 for each such violation or continuation, to be sued for and recovered in the manner above set forth. In case a defendant against whom judgment has been recovered for a penalty of \$500 00 shall fail or neglect to forthwith pay the amount of the penalty, the court shall commit her to jail in the manner above set forth, for any period not exceeding 200 days. A penalty recovered for any violation of this chapter shall be paid to the board, which shall pay one-half thereof to any incorporated medical society procuring the evidence upon which the defendant was convicted. The other half shall be applied by the board to the same purposes as other funds of the board collected in accordance with the provisions of this chapter.

45:10-15. Costs. The costs recoverable in any such proceeding shall be the same as costs taxed in actions in said courts, and shall be recoverable

by the board in the event of conviction of the defendant.

45:11-32. Refusal to renew a license; revocation or suspension of a license; notice; hearing; review. The board may refuse to renew a license, may suspend a license or revoke a license for any of the following causes: dishonesty, unfitness or incompetency, conduct derogatory to nursing, fraud or willful misrepresentation in an application for license or renewal thereof, willful or repeated violations of any provisions of this act, conviction whether by trial or plea of guilty, non vult, or nolo contendere of a crime involving moral turpitude or indicating unfitness to practice nursing or of a violation of this act. The board may revoke any license for mistake of the board with respect to any material matter. No license shall be suspended or revoked or renewal of license refused except upon compliance with the following procedure. A complaint shall be filed with the board specifying the charges and may be made by any member or employee of the board upon information or belief. At least 10 days prior to the time fixed for hearing notice of such hearing together with a copy of the complaint shall be served personally or sent by registered mail addressed to the licensee at the licensee's address appearing upon records of the board. Licensee shall have the right to be represented by counsel, to cross-examine witnesses produced against the licensee, and to offer evidence. At the request of licensee or on the board's own motion the board shall issue subpoenas signed by a member of the board to compel the appearance and testimony of witnesses and the production of records and documents, and subpoenas issued at the request of the licensee or his or her counsel shall be delivered to such licensee or counsel for service. There shall be paid to witnesses at the time of service of subpoenas the same fees as in the case of subpoenas issued out of the superior court. Testimony shall be given under oath or affirmation administered by a member of the board. Any person who shall willfully give false testimony under oath or affirmation in any hearing before the board shall be guilty of perjury. The board shall not be bound by rules of evidence but its determination shall be supported by some competent evidence. The determination of the board suspending or revoking a license, or refusing to issue a renewal of a license after hearing, shall be reviewable by a proceeding in lieu of a prerogative writ. At any time, within 2 years after its determination suspending, revoking or refusing to renew a license, the board may in its discretion, for any cause, grant an application for a rehearing and make such redetermination as the case may warrant. The board may also at any time permit a person whose license has been revoked or whose application for renewal has been denied, to make an original application for a new license on such terms and

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conditions as in the judgment of the board are just and equitable L 1947, c 262, p 954, §10

45:11-36. Failure to obey subpoena. Any person who, having been personally served with a subpoena issued by the board and given or tendered the fees prescribed herein, shall, without legal excuse, fail to appear before the board, or fail to produce records or documents required to be produced by the subpoena, or fail or refuse to testify or to answer any proper question, shall forfeit for each offense a penalty of \$200 00, which shall be recoverable by the board in an action brought in its name in any civil court of this state having jurisdiction of an action to recover a penalty In addition to the foregoing remedy the board may apply to the superior court, to examine under oath the person whose testimony may be relevant and such person shall be given an opportunity to be heard, and if the court determines that such person shall be given an opportunity to be heard, and if the court determines that such person refused, without legal excuse, to obey the command of such subpoena to be examined or to answer a proper question or to produce a record or documents which he or she was ordered to produce, said court may order said person to comply forthwith with the subpoena or order of the board Any failure to obey such order of the court may be punished by the court as a contempt of such court

45:11-38. Recovery of penalties provided in section 15 [45:11-37]. The penalties provided for by section 15 shall be sued for and recovered by and in the name of the board Every county district court and every county court is hereby empowered to issue process at the suit of the board as plaintiff for the recovery of any such penalty The process shall be either in the nature of a summons or a warrant

In any action to recover such penalty, the certification of any member of the board under the seal of the board, that at the time of the offense charged the defendant was not licensed or the defendant's license was suspended, shall be received in evidence and shall be prima facie proof of the facts so certified L 1947, c 262, p 960, §16

45:11-39. Commitment of defendant for non-payment; disposition of penalties. If judgment be rendered for the plaintiff the court shall cause any defendant, who refuses or neglects forthwith to pay the amount of the judgment rendered against such defendant and all the costs and charges incident thereto, to be committed to the county jail for a period of not less than 10 days and not exceeding 100 days in the case of a first conviction, and for a period of not less than 30 days and not more than 200 days in the case of a subsequent conviction

All penalties recovered for any violations of this act and all recoveries upon such bonds shall

be paid to the board Neither the commitment of a defendant nor the confinement of a defendant for all or any period prescribed in the commitment shall be deemed to constitute payment of the judgment.

45:11-40. Blank.

45:11-41. Blank

45:11-42. Costs. The cost recoverable in any such proceeding shall be the same as costs taxed in actions in said courts, and shall be recovered by the board in the event of the conviction of the defendant L 1947, c 262, p 962, §20.

45:11-43. Injunction to restrain violations of this act. The superior court may, at the suit of the attorney general or of the board, prevent and restrain any violation of this act.

45:12-14. Refusal to renew; revocation or suspension of certificates reviewable by prerogative writ proceeding. All rulings of the board in refusing to issue or refusing to renew, or suspending, or revoking any certificate of registration shall be conclusive and binding unless the party in interest shall apply for a review by a proceeding in lieu of a prerogative writ to a court of competent jurisdiction and said court is hereby authorized and empowered to review and correct the action of the board, and the board shall forthwith carry out the judgment of the court on such review

45:12-20. Penalty for illegal practice; court proceedings for recovery. Any person who violates the provisions of this chapter, or obstructs or interferes with any duly authorized agent of the board in the performance of any duty under this chapter, or any person who employs, or gives aid to or assists any person not authorized to practice optometry within the meaning of this chapter, to practice optometry in this state, shall be subject to a penalty of \$200 00 for the first offense and \$500 00 for each subsequent offense, to be sued for and recovered by and in the name of the board Every county district court and every county court in any county is hereby empowered to issue process at the suit of the board as plaintiff for the recovery of any such penalty The process shall be either in the nature of a summons or a warrant.

45:12-21. Commitment of defendant for non-payment; defendant to be detained, unless bond filed, upon adjournment of trial. The court shall, if judgment be rendered for the plaintiff, cause any defendant, who refuses or neglects to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail in the case of a first offense for a period not less than 30 nor more than 60 days, in the

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discretion of the court, and in the case of subsequent offense to be committed to the county jail for a period not less than 60 nor more than 120 days for each subsequent offense in the discretion of the court

45:12-22. Blank

45:12-23. Blank

45:12-24. Costs. The costs recoverable in any such proceedings shall be the same as costs taxed in actions in said courts, and shall be recovered by the board in the event of the conviction of the defendant

45:12-25. Payment of penalty deemed a conviction. For the purpose of this chapter, payment of a penalty for violation of any provision or provisions of this chapter shall be deemed equivalent to a conviction

45:14-12. Refusal of examination; suspension or revocation of certificate; hearing; court review. The board may refuse an application for examination or may suspend or revoke the certificate of a registered pharmacist or a registered assistant pharmacist for any of the following causes. When the application or registration is shown to have been obtained by misrepresentation or fraudulent means or when the applicant or registrant is guilty of chronic or persistent inebriety, or addiction to the use of narcotic drugs, or has been convicted of violating any law of this or any other state or of the United States relating to narcotic drugs, or has been convicted of violating the provisions of any law relating to the sale of liquors, or has been twice convicted of violating any law relating to the practice of pharmacy, or has been convicted of a crime involving moral turpitude, or has impersonated an applicant for registration before the board. Before a certificate shall be refused, suspended or revoked, the accused person shall be furnished with a copy of the complaint and given a hearing before the board. Any person to whom a certificate shall be denied by the board or whose certificate shall be suspended or revoked by the board shall have the right to a review of such action by a proceeding in lieu of a prerogative writ

45:14-36.3. Suspension or revocation of permits; review. A temporary permit of any nature issued by the board may be suspended or revoked if the conditions under which the temporary permit is issued are not fulfilled within the period of time for which the temporary permit is issued. Any permit issued by the board may be suspended or revoked by the board for failure to meet any of the provisions of this chapter or any of the rules and regulations with reference to equipment for the prescription department, stock of drugs, pharmaceuticals and chemicals in the prescription department, size and other space requirements of the prescription

department, facilities necessary in the compounding of prescriptions, and sanitation, orderliness and cleanliness in the pharmacy or drug store, by serving a copy of the complaint upon the owner of the pharmacy or drug store and granting at least 10 days' advance notice of a hearing before the board. The suspension or revocation by the board of any permit issued by it shall be reviewable by a proceeding in lieu of prerogative writ

45:14-38. Jurisdiction; service of process; commitment for nonpayment. Every county district court and every county court in any county is hereby empowered, to issue process at the suit of the board as plaintiff for the recovery of any such penalty. Such process shall be either in the nature of a summons or warrant

The court shall, if judgment be rendered for the plaintiff, cause any such defendant, who may refuse or neglect to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for any period not exceeding 100 days

45:14-39. Injunction to restrain violations of chapter. The board may bring an action in the name of this state on the relation of the board, for an injunction to prohibit any habitual violation of this chapter or any of the orders or rules or regulations issued by the board or any other violation of any of the provisions of this chapter

45:15-18. Notice of proposed suspension or revocation of license; hearing; court review of questions of law. The commission shall, before suspending or revoking any license, and at least 10 days prior to the date set for the hearing, notify in writing the licensee of any charges made, and afford him an opportunity to be heard in person or by counsel. Such written notice may be served either personally or sent by registered mail to the last known business address of the licensee. If the licensee is a salesman, the commission shall also notify the broker employing him, specifying the charges made against such salesman, by sending a notice thereof by registered mail to the broker's last known business address. The commission shall have power to subpoena and bring before it any person in this state, or take testimony by deposition, in the same manner as prescribed by law in judicial proceedings in the courts of this state. The findings of fact made by the commission acting within its own powers shall, in the absence of fraud, be conclusive, but the superior court shall have power to review all questions of law involved in any final decision or determination of the commission, if application is made to the court by the aggrieved party within 30 days after such determination, which application shall be made to any judge of said court, and he shall

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have power to dispose of the matter in a summary action

45:15-23. Penalty for violations; court proceedings for recovery. Whoever violates any of the provisions of this article shall be liable for the first violation to a penalty of not more than \$200 00, for a second violation to a penalty of not more than \$500 00, and for any subsequent violation to a penalty of \$500 00. The penalty shall be sued for and recovered by and in the name of the commission. Every county district court and every county court is hereby empowered to issue process at the suit of the commission as plaintiff for the recovery of any such penalty. Such process shall be either in the nature of a summons or a warrant.

45:15-24. Right to trial by jury; commitment of defendant for nonpayment. If a jury be demanded the court shall cause a jury to be summoned. The court shall, if judgment be rendered for the plaintiff, cause any such defendant, who refuses or neglects to forthwith pay the amount of the judgment rendered against him and all costs and charges incident thereto, to be committed to the county jail for a period not exceeding 30 days.

45:15-25. Blank

45:15-26. Blank

45:15-27. Disposition of all penalties. Any penalty recovered for any violation of this article shall be applied by the commission to the same purpose as other funds of the commission collected in accordance with the provisions of this article.

45:15-28. Costs. The costs recoverable in any such proceeding shall be the same as costs taxed in actions in said courts, and shall be recovered by the commission in the event of conviction of the defendant.

45:15A-12. Violations of act; penalty; process. If after this act takes effect any person shall represent himself as having received a certificate as provided for in this act or shall practice as

a certified shorthand reporter without having received such certificate, or after having his certificate revoked shall continue to practice as a certified shorthand reporter, or shall use any title or abbreviation indicating that the person using the same is a certified shorthand reporter, or shall violate any of the provisions of this act, said person shall be liable to a penalty of \$200 00, which penalty shall be sued for and recovered by and in the name of the board. Every county district court and every county court is hereby empowered or may be made upon information and belief, that any person has violated any provision of this chapter, to issue process at the suit of the board as plaintiff for the recovery of any such penalty. The process shall be either in the nature of a summons or a warrant.

45:16-9. Exhibition of license to county clerk; registration with clerk of court; penalties for violations. No person shall enter upon or continue the practice of veterinary medicine, surgery or dentistry in any of their branches, unless he has complied with the provisions of this chapter, and shall have exhibited to the clerk of the county in which he desires to so practice, a license duly granted to him as hereinbefore provided. Upon the exhibition of a license as aforesaid, a person shall be entitled, upon the payment of \$1 00, to be duly registered in the office of the clerk of the county court in such county. Any person using any title or degree appertaining to the veterinary profession or practicing veterinary medicine, surgery or dentistry in any of their branches without being licensed and registered in conformity with the provisions of this chapter or otherwise violating any of its provisions, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the offense by a fine not less than \$100 00, or by imprisonment in the county jail for a period of not less than 30 days, or by both fine and imprisonment, and for each subsequent offense the punishment shall be double that of the preceding one. The respective prosecutors of the counties of this state shall prosecute violations of the provisions of this chapter.

PROPOSED REVISION

Title 46. PROPERTY

46:14-4. Proof of instruments not acknowledged or proved when witnesses dead, insane or nonresident; application to circuit court; notice; certificate of proof. If the grantor or any of the grantors of any deed or instrument of the nature or description set forth in section 46 16-1 of this title, made and executed, but not acknowledged or proved according to law, and the subscribing witnesses thereto are dead, of unsound mind or

resident without the United States, such deed or instrument may be proved before the superior court in a proceeding in the county in which the real estate or property affected thereby, or some part thereof, is situate, by proving the handwriting of such witnesses, or, if there be no such witnesses, by proving the handwriting of such grantor or grantors, to the full satisfaction of such court, which proof may be made by affi-

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davits in writing, taken before any officer in this state authorized by law to take the acknowledgment and proof of deeds, and annexed to such deed or instrument. The proofs shall be certified on or under such deed or instrument in open court by the judge holding such court.

Before any proof shall be taken as herein provided, notice of the application to the superior court for that purpose, describing the deed or instrument and the real estate or property contained therein or affected thereby, and the time and place of such application, shall be given by advertisements, signed by the person making the application, and set up in at least 5 of the public places in the county, 1 of which such places shall be in the city or township in which such real estate or property is situate at least 4 weeks before making the application, and also by a publication for at least 4 weeks successively in a newspaper printed in such county, if any be printed therein, and, if not, in a newspaper circulating in such county and printed in an adjacent county. Due proof, by affidavit annexed

to such deed or instrument, of the notice herein required shall be made to the court, and certified by the judge thereof in the certificate of proof herein required.

Source L 1898, c 232, p 693, §59 [C S p 1557, §59]

46:14-5. Proof of assignments of mortgages not acknowledged or proved; record thereof. If the assignor of any mortgage upon real estate in this state, heretofore or hereafter made and executed but not acknowledged or proved according to law and the subscribing witnesses thereto be dead, of unsound mind, nonresidents of this state or not to be found within this state, the deed of assignment may be proved before a judge of the superior court, by proving the handwriting of such witnesses to the satisfaction of the judge, and, upon the certificate of such judge indorsed on or annexed to such assignment that such proof has been made before him, such assignment may be recorded the same as if it were acknowledged according to law.

Source Rev 1877, p 708, §35 [C S p 3419, §35]

PROPOSED REVISION

Title 48. PUBLIC UTILITIES

48:2-35. Compelling witnesses to testify or produce documents; contempt. If a person subpoenaed to attend before the board or a member thereof fails to obey the command of the subpoena without reasonable cause, or if a person in attendance before the board or a member thereof refuses without lawful cause to be examined or to answer a legal or pertinent question, or to produce a book or paper, when ordered so to do by the board or a member thereof, the board or the member may apply to the superior court, upon proof by affidavit of the facts, for an order returnable in not less than 2 nor more than 10 days, directing such person to show cause before the court why he should not comply with the subpoena or order of the board.

Upon the return of the order the court shall examine under oath such person whose testimony may be relevant and such person shall be given an opportunity to be heard, and if the court shall determine that such person refused without legal excuse to comply with the subpoena or the order of the board, the court may order such person to comply forthwith with the subpoena or order. Any failure to obey the order of the court may be punished by the court as a contempt of the superior court.

Source L 1911, c 195, p 384, §27 [1924 Suppl §*167-47]

48:2-41. Enforcement. Observance of the orders of the board may be enforced by an action in lieu of prerogative writ, or for injunction in appro-

priate cases, or by a civil action to compel the specific performance of the order or of the duties imposed by law upon the public utility affected by the order.

Source L 1911, c 195, p 387, §33, as am L 1924, c 168, p 379, §1 [1924 Suppl §*167-53]

48:2-42. Penalty for noncompliance with orders. Any person or public utility that shall fail to comply with an order of the board, except an order to resume service which has been discontinued, shall be subject to a penalty of \$100 00 for every day during which the default continues. Any person or public utility that shall fail to comply with any order of the board directing the public utility to resume service which has been discontinued shall be subject to a penalty of \$250 00 for every day during which such default continues. Such penalties shall be recovered in a civil action in the name of the state.

Source L 1911, c 195, p 387, §33, as am L 1924, c 168, p 379, §1 [1924 Suppl §*167-53]

48:2-43. Review; application; notice. Any order made by the board may be reviewed by proceeding in lieu of prerogative writ in the manner provided by rules of the supreme court. Source L 1911, c 195, p 388, §38, as am L 1918, c 130, p 304, §1 [1924 Suppl §*167-58]

48:2-44

to

48:2-48. Blank

48:3-7.10. Action to enforce compliance. Compliance with the requirements of sections 48 3-7 8 and 48 3-7 9 of this title shall be enforced by a civil action, at the suit of the board, in the superior court, chancery division, through attachment of, or the appointment of a receiver for, the property in this state of any public utility failing to comply with the same, as well as through any other suitable equitable process and relief, and the court shall be authorized to order that such action be prosecuted in a summary manner

Source L 1935, c 62, p 167, §3, suppl to L 1911, c 195, p 374

48:3-28. Receivers or trustees for insolvent companies; appointment; sale or lease of property. Whenever any railroad, canal or turnpike company, incorporated under the laws of this state, has become insolvent or failed for 90 days after the same becomes due, to pay the principal or interest on any mortgage on its property and franchises, the superior court, chancery division, upon the application of a creditor, mortgagee or stockholder of the company, may appoint a receiver or receivers, or 3 trustees, who shall have and exercise all the powers and authority that it is lawful for receivers and trustees to exercise under Title 14, Corporations, General

The receivers or trustees may sell or lease the canal, railroad or turnpike belonging to the company, together with all its chartered rights, privileges and franchises. The purchasers or lessees of such works, rights, privileges and franchises shall thereafter hold, use and enjoy the same during the residue of the term limited in the charter of the company, or during the term specified in the lease, in as full and ample a manner as the stockholders of the company could or might have enjoyed the same, subject, however, to all the restrictions, limitations and conditions contained in the charter

Upon filing in the office of the secretary of state, within 6 months after the sale or lease, a certificate that they accept the charter of the company whose property has been sold or leased, under a corporate name different from that of such company, the purchasers or lessees shall become a corporation under the name so specified, with all the powers, rights, privileges and franchises of the former company

The purchasers or lessees, or the corporation formed by them as aforesaid, shall hold and enjoy the same, free and clear of all debts, claims and demands of creditors, mortgagees or stockholders, who shall look only to the fund arising from the sale or lease, which money, as collected, shall be paid into the court. Where the property is subject to a mortgage, the court may, with the consent of the plaintiff, or without such consent if the principal is not due, direct a sale or lease to be made subject to the lien of the mortgage.

Source Rev 1877, p 1281, §1 [C S p 4276, §145], suppl to R S 1847, p 129, rep Rev 1877, p 1395, item 411

48:4-28. Refusal to obey subpoena; application to superior court; contempt. If a person subpoenaed to attend any hearing refuses to appear, be examined or answer any question or produce any books, records, papers, vouchers, accounts and documents when ordered so to do by the commissioner of motor vehicles or his deputy, auditor or investigator designated by him to conduct such hearing, the commissioner, such deputy, auditor or investigator, may apply to the superior court, or any judge thereof, upon proof by affidavit of the facts, to make an order returnable not less than 2, nor more than 10 days, directing such person to show cause before the court why he should not comply with the direction or order of the commissioner, or of the deputy, auditor or investigator so appointed by the commissioner.

Upon the return of such order, the court shall examine such person under oath, and such person shall be given an opportunity to be heard and if the court shall determine that such person refused without legal excuse to obey the command of the subpoena, or to be examined, or to answer a question, or to produce any book, paper, voucher, record, account or document which he was ordered to answer or produce, the court may order such person to comply forthwith with the subpoena or order. Any failure to obey such order of the court, may be punished as contempt of the court

Source L 1934, c 68, p 187, §9, suppl to L 1916, c 136, p 283

48:4-35. Definitions.

a "Motor vehicle" as used in this article includes all vehicles propelled otherwise than by muscular power (excepting such vehicles as run only upon rails or tracks exclusively) carrying passengers for hire now or hereafter operated by virtue of a municipal consent upon a route or routes established in any municipality or municipalities

b "Self-insurer" means any person who, by virtue of any law of this state is exempted by some official, board or body of this state from the requirements imposed upon other owners of similar motor vehicles to carry insurance in an insurance company

c "Financial responsibility" means ability to satisfy claims to the extent set forth in section 48 4-36 of this title

d "For hire" means compensation in any form, whether directly or indirectly made

e "Financial coverage" means insurance and also self-insurer.

f "Magistrate" shall be taken to include the judges of the county courts and the judges, by whatever title named, of the courts of inferior criminal jurisdiction other than the juvenile and domestic relations courts

Source L 1935, c 216, p 491, §1

48:4-16. Definitions.

a As used in this article "motor vehicle carrying passengers for hire" is hereby defined as

meaning any motor vehicle propelled otherwise than by muscular power (excepting such vehicles as run only upon rails or tracks exclusively) carrying passengers for hire of any kind over the highways in this state except (1) motor vehicles carrying passengers for hire over the highways in this state by virtue of municipal consent or consents upon a route or routes established in any municipality or municipalities, (2) taxicabs, (3) hotel busses, (4) busses employed solely for transporting school children and teachers, (5) autobusses with a carrying capacity of not more than 6 passengers now or hereafter operated under municipal consent upon a route established wholly within the limits of a single municipality, which route does not in whole or in part parallel upon the same street the line of any street railway or traction railway or any other autobus route, (6) autobusses operated over highways in this state for the purpose of carrying passengers from a point outside the state to another point outside the state or from a point outside the state to a point within the state, or from a point within the state to a point outside the state between fixed termini on a regular schedule

b "Self-insurer" means any person who by virtue of any law of this state, or in case of a nonresident, of the state of which such person is a resident and in which any motor vehicle coming within the provisions of this article is registered, is exempted by some official, board or body of this state or such other state from requirements imposed upon other owners of similar motor vehicles to carry insurance or secure possible claims for damages by a bond of a surety company

c "Financial responsibility" means ability to satisfy claims to the extent set forth in sections 48 4-47 and 48 4-48 of this title

d "For hire" means compensation in any form, whether directly or indirectly made

e "Financial coverage" means insurance and also self-insurer.

f "Magistrate" shall be taken to include the judges of the county courts and the judges, by whatever title named, of the courts of inferior criminal jurisdiction other than the juvenile and domestic relations courts

Source L 1935, c 289, p 920, §1

48:6-19. Bridges and passageways over canal. Every company organized under this chapter shall construct and properly maintain adequate bridges and passages over or under the canal at all places where any road or highway shall cross the canal

Where the canal intersects any farm lands of any individual, the company shall provide and keep in repair suitable passageways over or under the canal. The canal company may refuse to build bridges to connect any such farm lands, in which event a judge of the superior court may appoint commissioners to assess the damages to

the owner of the land as provided in chapter 1 of the title Eminent Domain (§20 1-1 et seq.)
Source Rev 1877, p 939, §141 [C S p 4271, §128]

48:8-8. Maintenance of safe landing places. All owners or keepers of ferries shall construct and maintain safe places of landing, where they are needed, upon penalty of forfeiting such sum as the county court of the county where the same is needed, shall, upon complaint, determine to be sufficient to construct or repair such convenient landing. The forfeiture shall, by order of said court, be appropriated and laid out for that purpose

Source Rev 1877, p 420, §11 [C S p 2310, §11]

48:8-17. Actions for penalties; process. The penalties imposed by this article shall be recoverable by a civil action, with costs, in any court having cognizance thereof, by any person who will sue for the same

Source Rev 1877, pp 1210 to 1212, §§1 to 3, 5, 6, 11, 12 [C S pp 5649 to 5652, §§2 to 3, 5, 6, 11, 12]

48:11-11. Injunction proceedings by attorney general. The attorney general shall institute in the superior court proceedings to restrain the erection or operation of any broadcasting station or transmitter, or the transfer thereof, or the assignment or transfer of any certificate, in violation of this chapter

Source L 1930, c 15, p 32, §8

48:12-132. Stockholders dissenting from consolidation; merger or lease; procedure. Any stockholder of any company of this state who shall refuse to convert his stock into the stock or securities of the consolidated or acquiring company or who shall dissent from any merger or lease of the property and franchises of his company to another company, may at any time within 30 days after the adoption of the agreement by the stockholders of his company apply by complaint and order to show cause, to be served on the company, or on the consolidated or acquiring company if the consolidation or merger shall have become effective, in a summary proceeding in the superior court, for the appointment of 3 disinterested citizens of this state to estimate the damage if any done to the stockholder by such consolidation, merger or lease. Such appraisers shall also separately appraise the shares of the stockholders at the full market value thereof without regard to any depreciation or appreciation thereof in consequence of the consolidation, merger or lease. Their award when filed with the clerk of the superior court and confirmed by the court shall be final and conclusive

The company, or the consolidated or acquiring company if the consolidation or merger shall have become effective, may, at its election, pay to the stockholder the amount of damages so found, if any, or the value of the stock so appraised and determined. Upon the payment of the value of his stock it shall be transferred and belong to the company, or to the consolidated or acquiring

company if the consolidation or merger shall have become effective, as the case may be, to be disposed of by the directors or retained

In case the value of the stock shall not be paid within 30 days after the confirmation of the award and notice to the company, or to the consolidated or acquiring company if the consolidation or merger shall have become effective, the damages so found and confirmed shall have the force and effect of a judgment of the superior court for such damages against the company or, in the case of a consolidation or merger which shall have become effective, against the consolidated or acquiring company As amended L 1948, c 317, p 1269, §7.

48:12-145. Failure to run daily trains; receiver; exceptions. If a railroad company shall fail or neglect to run daily trains on any part of its road for a space of 10 days the superior court, in a civil action, to be conducted as a summary proceeding, instituted by a citizen of this state and on due proof of the facts, may appoint a receiver who shall take possession of all of the real estate and personal property of the company and operate the road and transact the ordinary business thereof in the transportation of freight and passengers for such time as the superior court may direct

All expenses incurred thereby shall be a first lien on all the earnings of the company prior to any other claim and the surplus if any shall be distributed as the superior court may direct The receiver shall apply all unencumbered personal property not required in the operation of the road and all moneys transferred to him at the time of his appointment, towards the payment of wages then due to employees of the company, not exceeding 2 months' wages

This section shall not apply to a railroad at any seaside resort built principally for the transportation of summer travelers nor to a temporary suspension necessary to complete, reconstruct or change the grade of any railroad

Source L 1903, c 257, p 689, §86 [C S p 4256, §86]

48:12-146. Operation of insolvent railroad by receiver; expenses. When a railroad company in this state shall become insolvent and its property shall have passed into the hands of a receiver by order of the superior court, the receiver shall operate the railroad for the use of the public, subject at all times to the order of the superior court All expenses incident to the operation of the railroad shall be a first lien on the receipts, to be paid before any other encumbrances whatever.

Source Rev 1877, p 196, §106 [C S p 4258, §91], suppl to R S 1847, p 129

48:12-147. Sale or lease of railroad by receiver. The receiver, appointed by the superior court, of an insolvent railroad company of this state, or of another state holding railroad franchises and property in this state, may, with the

approval of the court, lease or sell the railroad with all its chartered rights, privileges and franchises

The purchaser or lessee shall hold, use and enjoy the same during the residue of the term limited in the charter of the company or during the term in such lease specified as fully as the company could have enjoyed the same, subject to all the restrictions, limitations and conditions contained in the charter

Where the railroad of an insolvent company lies partly in another state, the superior court may order the sale of any of its property or franchises at the same time or place, whether in or out of this state, of any official or foreclosure sale thereof out of this state Such sale may be made in such manner that a purchase thereof may be made on one and the same bid by the purchaser of the property and franchises out of this state or otherwise as the court may direct, imposing on the purchaser such terms as shall be equitable The court may order the company to join with the receiver in the conveyance of the property and franchises

Source L 1903, c 257, p 682, §73 [C S p 4251, §73]

48:12-148. Lease of railroad by trustee or receiver; conditions. No lease of a railroad shall be made by a trustee or receiver appointed by the superior court except upon a rental and adequate security for the payment of the same, both to be first approved by the court and a majority of the stockholders of the railroad in interest, upon such public notice to the parties in interest as the court shall direct

Source Rev 1877, p 1282, §2 [C S p 4259, §92], suppl to R S 1847, p 129, rep Rev 1877, p 1395, item 411

48:12-149. Return to receiver of insolvent railroad money deposited with state treasurer. When any court of competent jurisdiction has decreed a railroad company to be insolvent and appointed a receiver to wind up its affairs, such court may, upon motion of such receiver and upon such notice as the court may require, order the state treasurer to pay to the receiver any money of the company deposited with the state treasurer at the time of its organization, or such part thereof as may remain on deposit

Upon the making of such order the state treasurer shall pay the money so deposited, or such part thereof as may remain in his hands, to the receiver who shall, after paying his expenses, distribute the balance to such creditors or stockholders as may by law be entitled to receive the same

Source L 1903, c 257, p 690, §87, as am L 1908, c 79, p 119, §1 [C S p 4256, §87]

48:15-54. Compliance with order; fixing of compensation by court. Upon the making of the order aforesaid, the street railway or traction company, within the time fixed in such order, shall lay its tracks, wires and appurtenances on the bridge and use the same for public travel

Should the board order the company to lay

its tracks, wires and appurtenances on the bridge and to operate its cars thereon but refuse to determine the compensation if any to be paid by the company to the municipality owning the bridge for the use thereof, the superior court, in a summary proceeding on the complaint of the municipality or the company, shall fix the compensation, if any, to be paid

Notwithstanding any proceeding to review the amount of compensation to be paid, the company shall proceed to lay its tracks, wires and appurtenances on the bridge and operate its cars thereon, pending the controversy as to the amount of the compensation to be paid

Source L 1913, c 361, p 778, §3 [1924 Suppl §*167-67], suppl to L 1911, c 195, p 374

48:15-56. Proceedings where stockholder dissents. Any stockholder of a company whose property and franchises shall be leased pursuant to section 48 15-55 of this title and who shall not assent to the lease, or who shall resist or object to the making thereof, may within 30 days after the making of the lease, apply by complaint in a summary proceeding in the superior court,

for an order to appoint 3 disinterested persons to estimate the damage if any done to the stockholder by the lease and to appraise his stock at the full market value thereof without regard to any depreciation or appreciation in consequence of the lease The award of the persons so appointed or a majority of them when confirmed by the court shall be final and conclusive

The lessor company may at its election pay to the stockholder either the amount of damages so found and awarded, if any, or the value of the stock so ascertained Upon the payment of such value of the stock, the stockholder shall transfer the stock to the lessor company to be disposed of or retained for the benefit of the remaining stockholders

If the value of the stock is not so paid within 30 days from the filing of such confirmation of the award by the court and notice to the lessor company, the damage so found and confirmed shall be a judgment against the company and collected as are other judgments

Source L 1893, c 68, p 126, §2 [C S p 5015, §81], L 1893, c 169, p 297, §2 [C S p 5020, §96], L 1893, c 172, p 315, §17 [C S p 5031, §113]

PROPOSED REVISION

Title 49. SALE OF SECURITIES

49:1-7. Failure to comply with order of attorney general; subpoena by superior court; injunction. If a person, partnership, corporation, company, trust or association shall fail or refuse to file any such statement or report, or obey any such subpoena, or give testimony, or answer any question, or produce any book, record, document, account or paper as required, the superior court, upon the complaint of the attorney general in a summary proceeding, and upon proof of such failure or refusal, may make an order awarding process of subpoena or subpoena duces tecum, out of said court for such witness to appear and testify before the attorney general, and make an order that any person give testimony and answer questions as required, and produce books, records, documents, accounts or papers as required

Upon proof of such failure or refusal the court may also grant an injunction restraining the issuance, sale, offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement or distribution within or from this state of any securities, by such person, partnership, corporation, company, trust or association, and any agent, employee, broker, partner, officer, director, or stockholder thereof, until the filing of the statement or report, the compliance with such subpoena, the production specified therein, the giving of testimony, the answering of questions and the completion of the attorney general's in-

vestigation of the practices of such person, partnership, corporation, company, trust or association The court may grant such other and further relief as justice and equity shall require
Note of Reporter This section and 49 1-10 are redundant The additional material in 49 1-10 (second paragraph) has been added to this section and 49 1-10 is repealed

49:1-8. Issuance of subpoena; contents. Upon filing the order mentioned in section 49 1-7 of this title, in the office of the clerk of the superior court, the clerk shall, under the seal of the court, issue process of subpoena to appear before the attorney general at a time and place named therein, and from time to time until the examination of such person shall be completed Such subpoena may contain a direction that the witness bring with him to such examination any book, record, document, account or paper therein mentioned The clerk shall issue under the seal of the court, such other order in reference to the examination, appearance and production of any book, record, document, account or paper as the court shall direct

49:1-9. Failure to obey subpoena or order; contempt; commitment. Failure or refusal to obey any such subpoena or order shall be punishable as a contempt of court, and, in addition to any other penalty, the court may order such offender to be committed and kept in close custody until it shall order otherwise.

PROPOSED REVISION OF SECTIONS OF OTHER TITLES

49:1-10. Repeal

Note of Reporter The subject of this section is included in the revised 49 1-7

49:1-11. Application for injunction or receiver when illegal practices engaged in; summary hearing. When it shall appear to the attorney general from any report or statement filed, from any examination made as provided by this chapter or from any source whatsoever, that a person, partnership, corporation, company, trust or association has engaged in, is engaging in, or is about to engage in, any practice declared to be illegal and prohibited by this chapter, or that it will be against public interest for the same to issue, sell, offer for sale, purchase, offer to purchase, promote, negotiate, advertise or distribute any securities within or from this state, he may by complaint setting forth the facts and circumstances, apply to the superior court, for an injunction, or the appointment of a receiver, or both

The court may, upon being satisfied by affidavit or otherwise of the sufficiency of such application and the truth of the allegations contained in the complaint and upon such notice as it may by order direct, proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties

Source R S 49 1-11 and 13

Note of Reporter. This section and 49 1-13 are redundant. Additional material from 49 1-13 has been added to this section and 49 1-13 repealed

49:1-12. Injunction restraining continuance of illegal practices. If it shall appear to the court, upon the inquiry mentioned in section 49 1-11 of this title, that the matters charged in the complaint have been established by a preponderance of the proofs, it may issue an injunction restraining the defendant, and any agent, employee, broker, partner, officer, director or stockholder thereof, from continuing such practices or engaging therein or doing any acts in furtherance thereof, and restraining the issuance, sale, offer for sale, purchase or offer to purchase, promotion, negotiation, advertisement or distribution within or from this state of any securities by the defendant and any agent, employee, broker, partner, officer, director or stockholder thereof until the court shall otherwise order.

49:1-13. Repeal.

49:1-14. Repeal

Note of Reporter No statute is needed for the entry of a judgment where the defendant consents, so long as the court has jurisdiction of the subject matter

49:1-15. Appointment of receiver for person; powers and duties of receiver. When the court shall issue an injunction as provided for in sections 49 1-11 and 12 of this title against a person, it may appoint a receiver with power to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills,

notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this chapter, including property with which such property has been mingled, if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court for the equal benefit of all who establish an interest therein by reason of the use and employment by the defendant of any practices herein declared to be illegal and prohibited. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as justice and equity shall require

49:1-16. Injunction against use of corporate and other franchises; receiver. When an injunction is issued under sections 49 1-11 and 12 of this title, against a corporation, partnership, company, association or trust, the court may appoint a receiver for the defendant, and restrain it, and its officers, directors, stockholders, members, grantors, trustees, cestuis que trust and agents, as the case may be, from exercising any of its privileges or franchises, or from executing the trust, and, in all cases, from collecting or receiving any debts, or disposing of or encumbering any of its property and assets, in any way whatever, except to such receiver

Upon the appointment of the receiver, all the real and personal property of the corporation, partnership, company, association or trust, and its franchises, rights, privileges, and effects shall forthwith vest in him and the corporation, partnership, company, association or trust shall be divested of the title thereto

The receiver shall settle the estate and distribute the assets, and have all the powers and duties conferred upon receivers by the provisions of Title 14, Corporations, General, so far as the provisions thereof are applicable

49:1-17. Service of papers. When, under the authority of this chapter, the attorney general shall deem it necessary to serve any notice, subpoena, questionnaire or other paper, demand, request or document upon, or shall institute any legal proceeding against anyone subject to the provisions of this chapter in order to carry into effect the provisions thereof, and he is unable to effect personal service thereof, or of any subpoena, process, order, notice or pleading in any such proceeding, within this state, service thereof as service substitute for personal service in this state may be made in the following manner.

a Personal service thereof without this state; or

b The mailing thereof by registered mail to the last known place of business, residence or abode, within or without this state, of such person, partnership, corporation, company, trust or association for whom the same is intended, or

PROPOSED REVISION OF SECTIONS OF OTHER TITLES

c Such service as the superior court, on affidavit of the attorney general, may direct in lieu of personal service within this state

Service upon any officer, director or employee, or upon the registered agent, of any corporation shall be deemed personal service within the meaning of this chapter

49:1-19. Incriminating evidence; compliance with direction. If a person shall ask to be excused from testifying or producing any book, paper or other document before the attorney general, or the court or officer conducting the inquiry, upon any trial, investigation or proceeding initiated by the attorney general pursuant to the provisions of this chapter, for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or to convict him of a crime or subject him to a penalty or forfeiture, and shall, notwithstanding, be directed by the court or officer conducting the inquiry to testify or to produce such book, paper or document, he shall comply with such direction

49:1-21. Ne exeat against essential witnesses. The attorney general may, in addition to any other remedies, apply to the superior court, on motion verified by affidavit reciting the applicable facts, for a writ of ne exeat against any person whose testimony is essential to a pending investigation under this chapter, and whose failure to appear and testify may defeat the proper and effective conduct thereof. Such writ shall issue ex parte, subject to vacation or release on bail by application on notice, even though no action

in connection with said investigation be then pending in the court

Note of Reporter This section is revised to eliminate procedure covered by the rules of court. See Rule 3 64-1

49:1-22.

Note of Reporter The Reporter has recommended that this section be repealed since it is regarded as procedural. In view of the language of Rule 3 64-1 it seems that it should be retained. The bar is asked for its views as to this section

49:1-23. Orders by court to prevent illegal practices. In any proceeding instituted by the attorney general in the superior court for the purpose of carrying into effect the provisions of this chapter, the court may make such orders or judgments as may be necessary to prevent the use or employment by a person, partnership, corporation, company, trust or association, of any of the practices herein declared to be illegal and prohibited, or which may be necessary to restore or distribute to any person in interest any moneys or property, real or personal, which may have been acquired by such person, partnership, corporation, company, trust or association by means of any practice herein declared to be illegal and prohibited

49:1-26. Publication of information prohibited; misdemeanor. A person who shall publish, or cause to be published, any information relative to any complaint, statement, report, subpoena, testimony, investigation, examination, or other proceeding made or conducted pursuant to this chapter, before the institution of any proceeding thereunder in any court of this state, shall be guilty of a misdemeanor

49:1-27. Repeal

Note of Reporter Costs and counsel fees are for the rules. Cf Rule 3 54-7

PROPOSED REVISION

Title 50. SHELLFISH

50:1-12. Power to issue subpoenas; penalties for failure to attend or testify. For the purpose of section 50 1-11 of this title the board may issue subpoenas, signed by its president and secretary, requiring the attendance of witnesses and the production of books and papers in any part of the state before it or before any of its committees or before the director

50:5-2. Jurisdiction and venue. Proceedings for the recovery of penalties under this chapter shall be within the jurisdiction of and may be brought before any county district court or municipal court, hereinafter referred to as the "court", either in the county where the offense is committed or where the offender is first apprehended or where he may reside.

50:5-4. Proceedings; court rules. Proceedings under this chapter shall be entitled and shall run in the name of the state, and the practice and procedure therein shall be in accordance with the rules of the supreme court heretofore or hereafter promulgated

50:5-5. Repeal

Note of Reporter Rule 8 3-1 provides all requirements for a criminal complaint

50:5-6. Service of process. Any warrant or summons issued in pursuance of this chapter may be directed to and shall be executed by any peace officer, director, member of the board, chief of a department or division, captain of guard boat, guard, or their assistants

Note of Reporter See Rule 8 3-2

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50:5-7. Repeal

Note of Reporter Repeal See Rule 8 3-2 and proposed revised R S 50 5-6

50:5-8. Trial and judgment. The accused shall be tried in a summary proceeding in accordance with the rules promulgated by the supreme court
Note of Reporter See Rules 8 7-1 et seq which adequately cover such procedure

50:5-9. Repeal

Note of Reporter See Rule 8 3-3

50:5-14. Repeal

Note of Reporter This section is unnecessary, see section 50 5-15 as revised

50:5-15. Fees and costs where department officers serve process. Where process is served in proceedings under this chapter by the director, member of the board, chief of a department or division, captain of guard boat, guard, or any of their assistants, the costs and fees therefor, being those prescribed for all summary proceedings for penalties before magistrates or other officers, shall be allowed to such officer or person for the use of the state

50:5-16. Repeal

Note of Reporter See Rule 8 3-17(a)

50:5-17. Forfeiture of property; hearing; confiscation of property. In addition to the penalties prescribed by section 50 5-1 of this title, any boat or other vessel or vehicle used or employed in violation of any of the provisions of this title shall be forfeited, together with all tongs, dredges, tackle, and furniture and appurtenances thereunto belonging The director, any member of the board, chief of a department or division, captain or master of guard boat, guard, special officer employed by the board, and the assistant of any of them, and any peace officer shall, and any other person may, seize and secure any such boat or other vessel or vehicle and shall immediately thereafter give notice thereof to

any county district court or municipal court located in the county wherein the seizure is made, which shall, at an appointed time and place, summarily hear and determine whether such boat or other vessel or vehicle was unlawfully used, and if it so appears, make an order directing the confiscation and forfeiture of such boat or other vessel or vehicle to the use of the board The board may dispose of such boat or vessel or vehicle at its discretion

50:5-18. Appeal. Any party to a proceeding under this chapter may appeal from the judgment in the manner provided by the rules of the supreme court, heretofore or hereafter promulgated

Source R S 50 5-18, 19 and 20

Note of Reporter Appeals are controlled by Rules 8 11 and 2 11

50:5-19. Repeal

Note of Reporter See revised 50 5-18

50:5-20. Repeal

Note of Reporter See revised 50 5-18

52:30-8. Hearing before commissioners; witnesses; stenographers; adjournments. At the time and place so fixed the commissioners shall hear all of the claimants who shall attend before them for that purpose, in respect to the value of said private ways, easements or servitudes, inspect all documentary proofs offered by such claimants and take depositions of witnesses testifying in behalf of the claimants or of the state or the United States For that purpose the commissioners may administer oaths to such witnesses and employ stenographers to reduce such depositions to writing Said stenographers shall receive the compensation prescribed by law to be paid to stenographers appointed by the superior court of the state The commissioners may adjourn the proceeding from time to time and shall orally announce at the close of each meeting the time and place at which the next meeting will be held

PROPOSED REVISION

Title 51. STANDARDS, WEIGHTS, MEASURES AND CONTAINERS

51:1-12. Penalties; enforcement; procedure. A person violating any provision of sections 51 1-10 or 51 1-11 of this title shall be liable to a penalty of \$50 00 to be recovered in an action at law instituted in the county district court or the municipal court by any person who may sue therefor Such penalty when recovered shall be paid to the county treasurer of the county in which the violation occurred

Note of Reporter The second and third paragraphs are to be covered by proposed R S 2A 8-47

51:1-103. Action to recover penalty; jurisdiction. An action for the recovery of a penalty

for violation of this chapter shall be within the jurisdiction of and may be brought before any county district court, criminal district court, or municipal court in the county where the offense is committed, or where the defendant may reside, which courts and officers are hereinafter referred to in this article as the "court"

51:1-104. Repeal

Note of Reporter Because of the eliminations recommended in 51 1-103, this section becomes meaningless If jurisdiction is removed from the justices of the peace, then section 2 8-46 (referred to in the instant section) has no pertinency

51:1-105. Summary proceeding to recover penalty; summons or warrant. A penalty incurred for the violation of any of the provisions of this title may be enforced in a summary proceeding brought in the name of the state by a superintendent, assistant superintendent, or inspector

The warrant or summons may be directed to and shall be executed by any superintendent, assistant superintendent, inspector or peace officer

Note of Reporter In addition see Rules 8 3-1 (complaints), 8 3-2 (process) and criminal procedure form 10 (following section VIII of the rules) See also proposed R S 2A 8-47 (execution)

51:1-107. Appeal. Any party may appeal from a judgment rendered pursuant to section 51 1-105 of this title, in the manner provided by the rules of the supreme court

Note of Reporter See Rules 2 11 and 8 11

51:1-108. Repeal

Note of Reporter The rules adequately set forth the procedure on appeal See Rules 2 11 and 8 11

51:1-110. Repeal (Unnecessary)

51:1-112. Repeal

Note of Reporter This section should be repealed The calendar is a matter of court administration and has no place in the statutes

51:1-132. Action to recover penalty; summons or warrant; disposition of fines and penalties. An action to recover any penalty incurred under the provisions of this title may be brought in the name of the state of New Jersey by a duly appointed weights and measures officer by way of summary proceeding in the municipal court of the municipality wherein the alleged violation occurred The warrant or summons may be directed to and shall be executed by any duly appointed weights and measures officer or peace officer

It shall be the duty of the city attorney of any municipality wherein such violation shall take place to assist in the prosecution of the same, unless such municipality has no such superintendent of weights and measures as provided for in section 51 1-43 of the Revised Statutes, in which case the public prosecutor or the county wherein such violation shall take place shall assist in such prosecution

All fines and penalties collected under this title shall be paid by the court receiving the same, when recovered by a state weights and measures officer, to the state treasurer, when recovered by a county weights and measures officer, to the county treasurer of such county; and when recovered by a municipal weights and measures officer, to the municipality which such officer represents

Note of Reporter See Rules 8 3-1 (complaint), 8 3-2 (warrant and summons), 8 3-3 (summary arrest), and 2 11 and 8 11 (appeal) See also proposed R S 2A 8-47 and 49 for execution and remission of penalties

51:4-22. Deviations from standards; penalties; enforcement. Any deviation from the authorized

standards herein or hereafter adopted, where said deviation indicates an intention to defraud shall for the first offense be liable to a penalty of not less than \$25 00 or more than \$50 00 and for a second offense be liable for a penalty of not less than \$50 00 or more than \$100 00 and for each subsequent offense shall be liable to a penalty of not less than \$100 00 or more than \$200 00 or imprisonment for not less than 30 days or more than 90 days or both, the amount of said penalty to be determined as aforesaid in the discretion of the county district court judge or municipal court magistrate having jurisdiction An action to recover any penalty under this article may be brought in the name of the state of New Jersey by a lumber inspector appointed as herein above set forth, with the same procedure as if brought by any duly appointed superintendent

Note of Reporter The language deleted refers to execution against goods, chattels, etc "as provided in section 51 1-105"

When 51 1-105 was amended in 1939, any reference to execution was excised The change here recommended will make both acts consistent Also, R S 2A 8-47 (proposed) covers

51:7-9. Procedure for recovery of penalties; jurisdiction. The procedure for the recovery of any penalty incurred under the provisions of this chapter shall be the same as the procedure specified in sections 51 1-105 to 51 1-111 of this title All actions shall be instituted in the name of the state of New Jersey by any weights and measures officer who shall have the same powers in connection with the enforcement of this chapter as are vested in them in sections 51 1-105 to 51 1-111 of this title Jurisdiction of all cases arising out of violations of the provisions of this chapter is hereby conferred upon all municipal courts located in the county in which such violations are committed

51:8-15. Procedure for recovery of penalties. An action to recover any penalty incurred under the provisions of this chapter may be brought in the name of the state of New Jersey by any duly appointed weights and measures officer by way of summary proceeding in the municipal court of the municipality where the alleged violation occurred The warrant or summons may be issued to and shall be executed by any weights and measures officer or peace officer

It shall be the duty of the city attorney of any municipality wherein such violation shall take place to assist in the prosecution of the same, unless such municipality has no such municipal superintendent of weights and measures as provided for in section 51 1-43 of this title, in which case the public prosecutor of the county wherein such violation shall take place shall assist in such prosecution

51:8-17. Appeal. Any party may appeal from a judgment rendered pursuant to this chapter, in the manner provided by the rules of the supreme court

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51:8-18. Repeal

Note of Reporter This section is amply covered by the Rules 8 11 and 2 11

51:9-1. Definitions. As used in this chapter a The word "magistrate" shall be construed to mean and to include all municipal court magistrates and other officers having powers of a committing magistrate

b The words "liquid fuels" shall be deemed to mean and to include fuel in liquid form, which can or may be used for heating purposes, provided, however, that oils shall not be included if they possess a flash point of 105° F or lower, as determined by the Tagliabue closed cup tester or a Saybolt universal viscosity at 100° F higher than 55 seconds

c The words "weights and measures official" shall be deemed to mean and to include any state, county or municipal superintendent, or assistant superintendent of weights and measures As amended L 1938, c 323, p 834, §1

51:9-11. Penalties; amount; municipal attorney to assist in prosecution. Any person violating any of the provisions of this chapter shall, upon conviction thereof, pay a penalty of not less than \$25 00 nor more than \$50 00, for the first offense, or for failure to forthwith pay such penalty shall be imprisoned in the county jail for a period not exceeding 20 days, and for a second offense, shall, after conviction, pay a penalty of not less than \$50 00 nor more than \$100 00, and for failure to forthwith pay such penalty shall be imprisoned in the county jail for a period not exceeding 40 days, and for a third or each subsequent offense, shall, after conviction, pay a penalty of not less than \$100 00 nor more than \$200 00, and for failure to forthwith pay such penalty shall be imprisoned in the county jail for a period not exceeding 60 days

All penalties collected from persons violating the provisions of this chapter shall be paid by the magistrate receiving the same, when recovered by the state superintendent of weights and measures, or his assistants, to the state treasurer, when recovered by a county weights and measures officer, to the county treasurer of such county, and when recovered by a municipal weights and measures officer, into the treasury of the municipality which such officer represents

It shall be the duty of the municipal attorney of any municipality wherein any violation takes place to assist in the prosecution of the same and to assist in the trial of any appeal, where a complaint is made by a municipal weights and measures official

51:9-12. Procedure for recovery of penalties.

An action to recover a penalty incurred under the provisions of this chapter may be brought in the name of the state of New Jersey by any duly appointed weights and measures officer by way of summary proceeding in the municipal court of the municipality where the alleged violation occurred The warrant or summons may issue to and shall be executed by any weights and measures officer or peace officer

Note of Reporter Rule 8 3-1 for complaint, Rule 8 3-2 for process, Rule 8 7 for trial

51:9-15. Repeal

51:9-16. Repeal

Note of Reporter Both of these sections are covered by the rules However in place of 51 9-15, the following should be substituted

"Appeal Any party may appeal from a judgment rendered pursuant to this chapter, in the manner provided by the rules of the supreme court"

51:9-19. Repeal See Rule 8 3-1.

51:9-20. Repeal.

Note of Reporter Rule 8 3-2(b) covers this subject fully This section should be repealed or confusion will result

PROPOSED REVISION

Title 52. STATE GOVERNMENT DEPARTMENTS AND OFFICERS

52:14-17.2. Appeal; practice and procedure. Any officer or employee of this state, who may be removed by the governor, pursuant to article 5, section 4, paragraph 5, of the constitution, may appeal from the order of removal to the superior court, appellate division The practice and procedure on such appeal shall as nearly as possible be in accordance with the rules of the supreme court governing appeals from administrative agencies

Note of Reporter Title of act

An act to provide the manner in which the removal of an officer or employee, by the governor, pursuant to article V, section IV, paragraph 5, of the constitution may be judicially reviewed

52:14-17.3. Repeal

52:14-17.4. Notice of appeal. The notice of appeal shall designate the governor, by his name of office only, as respondent A copy of the notice of appeal shall be filed in the office of the secretary of state who shall transmit a certified copy to the governor

52:14-17.5. Repeal.

52:14-17.6. Designation of counsel. The governor may designate the attorney general or other counsel to represent the respondent in the proceeding.

52:14-17.7. Repeal

52:14-17.8. Repeal (See 52 14-17.2)

52:14-17.9

to

52:14-17.11. Repeal

52:14-17.12. Fees. For the filing of a notice of appeal and transmitting a certified copy thereof to the governor, the secretary of state shall be entitled to a fee of \$10 00 to be paid by the appellant. The clerk of the superior court and the clerk of the supreme court shall be entitled to the same fees as upon other appeals in their respective courts, except that no filing or other fees shall be demanded of the respondent. No costs shall be awarded against the respondent.

52:16-1. Bond; conditions; surety; filing. The secretary of state, before entering upon the performance of his duties, shall enter into bond to the state of New Jersey, with sufficient surety to be approved by one of the judges of the superior court, in the sum of \$5,000 00, conditioned that he will well and truly execute the office of secretary of state of New Jersey, and faithfully and impartially perform and execute all things pertaining to said office, both as regards the state and all persons concerned, and at the expiration of his said office, deliver all the books, records and papers remaining in or appertaining to said office, to his successor. If individual and not corporate surety is given, the sureties shall be at least 2 in number and shall be freeholders of the state.

52:16-2. Oath; form; filing. The secretary of state, after having given bond as required by section 52 16-1 of this title, shall take and subscribe the following oath before any one of the justices of the supreme court:

"I, A B, do solemnly swear (or affirm) that I will well and truly, faithfully and impartially execute the office of secretary of state of New Jersey, agreeably to law, according to the best of my skill and understanding."

Said oath, so subscribed, shall be delivered by the justice administering the same, to the state treasurer who shall keep it among the public papers of his office.

52:16-3. Salary. The secretary of state shall receive an annual salary of \$10,000 00 which shall be full compensation for all services rendered by him as secretary of state or in any other official capacity whatever.

Approved and effective April 4, 1945

52:16-8. Recording and filing papers. The secretary of state shall, with all convenient speed, record all papers which shall come to his hands and which it is his duty to record, and also file such papers in his office, agreeably to law.

52:17A-4. Powers and duties of department. The powers and duties of the department of law

shall be the powers and duties now or hereafter conferred upon or required of the attorney general, either by the constitution or by the common and statutory law of the state, and as specifically but not exclusively as detailed herein, to wit:

- a Be present at the seat of the government during the sessions of the legislature,

- b Give to the governor, to the members of the senate and the general assembly, and to all other officers, departments, boards, bodies, commissions and instrumentalities of the state government, legal advice on such matters as they may from time to time require.

- c Examine and decide all legal matters submitted to him by the governor or the legislature and act for them in any matter in which they may be interested, and shall exclusively attend to and control all litigation and controversies to which the state is a party or in which its rights and interests are involved.

- d Carry out and enforce the provisions of the New Jersey securities law, also the civil rights law.

- e Act as the sole legal adviser, attorney or counsel, notwithstanding the provisions of any other law, for all officers, departments, boards, bodies, commissions and instrumentalities of the state government in all matters other than those requiring the performance of administrative functions entailing the enforcement, prosecution and hearing of issues as imposed by law upon them, and represent them in all suits, proceedings or actions of any kind which may be brought for or against them in any court of this state, and shall likewise interpret all statutes and legal documents, inspect and approve contracts and titles and otherwise control their legal activities.

- f Render aid in the prosecution of the criminal business of any county at the written request of the prosecutor of the pleas of the county, prosecute the criminal business of the state in a county having no prosecutor of the pleas, attend for the trial of homicide cases and other high crimes and misdemeanors, or for the prosecution of the criminal business of the state, in any county, on the written request of a judge of the superior court or of the board of chosen freeholders of the county, and attend for the prosecution of a specific investigation or of a particular criminal case in any county on the written request of the governor.

- g Attend generally to all legal matters in which the state or any officer, department, board, body, commission or instrumentality of the state government is a party or in which its rights or interests are involved,

- h Enforce the provisions of the constitution and all other laws of the state, as well as perform all of the duties conferred and imposed by law upon the attorney general.

52:17A-5. Authority of attorney general as county prosecutor of pleas; compensation. Whenever the attorney general, personally or by his

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deputies or assistants, shall attend in any county where there is no prosecutor, or at the request of the governor or of a judge of the superior court or of the board of chosen freeholders or of the prosecutor of the pleas of the county, for the prosecution of the criminal business of the state in said county or of such part thereof as shall be designated in, or as shall fall within the general purview of the matters designated in, the written request therefor, the attorney general and his deputies or assistants shall have all the power and authority of the prosecutor of the pleas for prosecuting the criminal business of the state or such part thereof, including the investigation of alleged crimes and misdemeanors, the attendance before the criminal courts and grand juries of the county, the preparation and trial of indictments for crimes and misdemeanors and the representation of the state in all proceedings in criminal cases on error or otherwise in the courts of this state

Whenever the attorney general shall have taken over the duties of a prosecutor of the pleas, he shall have all of the authority conferred by law upon the prosecutor, and he may appoint such temporary assistants as he may deem necessary, and shall also have power to appoint such aids, investigators or other personnel and clerical assistants as he shall deem necessary

Whenever the criminal business or any part of the criminal business of any county is prosecuted by the attorney general, personally or by his deputies or assistants, there shall be paid, by the treasurer of the county, such sum for that special service as a judge of the county court of such county shall certify and fix, on the application of the attorney general, provided, that the compensation allowed shall not exceed that provided by law for the payment of the prosecutor in said county for the same or similar services, provided, however, that no compensation so allowed shall affect the salary of the prosecutor or assistant prosecutors if any in said county

In prosecuting such criminal business, the attorney general shall have power to employ such investigators, clerical and other assistants and to incur such expenses as he shall determine, and the cost thereof, including the compensation allowed as aforesaid of any deputy or assistant attorney general who shall be employed or designated by the attorney general for that special purpose in addition to those regularly employed in the department of law, shall likewise be paid by the treasurer of the county when certified and fixed in the same manner

52:13-12. Bail of contemner. Any judge of the superior court may let to bail any person apprehended for hearing on a charge of contempt under a warrant issued by direction of a concurrent resolution as provided in section 52 13-6 of this title, in such amount and with

such surety as in the judgment of the judge shall be reasonable, to appear before the joint session of the legislature, at the time and place fixed by the warrant as well as at any and all adjournments thereof, and to stand to and abide such determination and sentence as may thereafter be found or imposed against the person so apprehended. Such recognizances shall run in favor of the state of New Jersey and shall be filed by the said judge in the office of the clerk of the superior court

52:19-2. Repeal

Note of Reporter This section should be repealed. It has been superseded by C 52 18A-37

52:27-2. Complaint in superior court alleging municipal default; procedure; commission to function. Whenever it shall be made to appear to a judge of the superior court by complaint filed by or on behalf of the holder of any notes or bonds of any municipality of this state, verified by the plaintiff, or his or its duly authorized agent, that such municipality has defaulted for over 60 days in the payment of the principal or interest of any of its outstanding notes or bonds held by the plaintiff, the court may make a summary investigation into the facts disclosed in the complaint. For that purpose the court may subpoena witnesses and call before it any officers of the municipality

If it shall be established to the satisfaction of the court that the municipality is so in default, it may make an order to that effect and file the same, together with the complaint, in the office of the clerk of the superior court

Upon the filing of such order, together with the complaint, the commission shall have and exercise with respect to such municipality the powers and duties prescribed by this chapter

52:27-3. Resolution by municipality declaring inability to meet obligations; procedure before superior court; commission to function. Any municipality may file with a judge of the superior court a complaint, accompanied by a certified copy of a resolution adopted by the governing body of the municipality reciting in general terms that due to unusual conditions the municipality is not in a position to meet its obligations when due, in spite of the endeavors of its officers, and requesting that the commission shall function in the municipality

Upon the filing of such complaint and upon such notice to the commission as the court may direct, the court may make a summary investigation into the facts. For that purpose it may subpoena witnesses and call before it any officers of the municipality

If it shall be established to the satisfaction of the court that the municipality is so unable to meet its obligations it may make an order to that effect and file the same, together with the com-

plaint, in the office of the clerk of the superior court

Upon the filing of such order, the commission shall function in such municipality with all the powers and duties conferred by this chapter

52:27-5. Powers of commission and director to cease upon annulment of order adjudging municipality in default. Whenever a justice of the former supreme court or a judge of the superior court has heretofore made, or a judge of the superior court shall hereafter make an order annulling, vacating and discharging any order theretofore made by it pursuant to this chapter adjudging that the municipality has defaulted in the payment of the principal or interest of any of its outstanding notes or bonds, the commission shall cease to continue in force in such municipality and neither the commission nor the said director shall thereafter exercise any powers or perform any duties in and for such municipality pursuant to this chapter, provided that the commission shall have heretofore or hereafter determined by resolution that it is not functioning in said municipality

52:27-12. Subpoenas; failure to obey or refusal to answer questions. The commission may issue subpoenas, signed by a majority of the commission, to compel attendance of witnesses before it and the production of books, papers and records. Any failure to obey any subpoena so issued or refusal to answer questions propounded by the commission shall be certified to a judge of the superior court for the county wherein such failure or refusal occurred, and the judge may impose penalties for such failure or refusal

52:27-32.1. Enforcement of judgments, etc., against municipality stayed; necessity of court order. Whenever the commission shall function in any municipality and so long as it shall continue so to do, no judgment, decree, levy or execution against the municipality or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the municipality, in the payment of which the municipality has defaulted, shall be enforced until otherwise specially ordered by the superior court in an appropriate proceeding for such purpose, after notice to the commission, and the enforcement of any such judgment, decree, levy or execution shall be stayed until otherwise specially ordered as aforesaid

52:27-33. Proceedings against municipality for assessment or collection of taxes prohibited; exceptions; remedies of holders of unpaid claims against municipality. Whenever the commission shall function in any municipality and so long as it shall continue so to do, no action or proceeding of any kind, either direct or ancillary, shall be brought against such municipality or any public officers for the assessment, levy or collection of taxes by or for such municipality

and any and all actions or proceedings therefor shall be and they hereby are stayed, except that first, a judge of the superior court, after notice to the commission, may authorize 1 or more creditors of such municipality to bring and maintain an action or proceeding therefor in the superior court, which shall be brought for the benefit of themselves and all other creditors of such municipality and in which all other creditors of such municipality shall have the right to intervene and assert their claim and in which all other creditors of such municipality may, and the commission shall, be made parties in such manner and upon such notice as the court shall approve, and except that, second, the commission may bring and maintain an action or actions by way of a proceeding in lieu of prerogative writ or by any other appropriate proceeding or proceedings for the assessment, levy or collection of taxes by such municipality for the payment of principal or interest of the indebtedness of the municipality found to be outstanding as provided in section 52 27-14 of this title

Without limiting its power otherwise to direct the assessment, levy or collection of taxes, the superior court in any such proceeding may, to the extent which it shall deem just and equitable, afford to the holders collectively of any due and unpaid claims against a municipality any remedy which might be afforded under any other law to any individual creditor in any proceeding in lieu of prerogative writ for the assessment, levy or collection of taxes, to the same extent as if there had been an entry of judgment in their favor, issuance of execution and return thereof unsatisfied, service thereof upon public officials and performance of any and all other conditions precedent to the affording of such relief under such other law, provided, that the court first be satisfied from proof submitted by affidavit or otherwise that the claims for the enforcement of which such remedy is sought are claims upon which a judgment could be obtained

52:27-33.2. Proceedings in superior court to determine application and distribution to creditors of property or funds of municipality. Whenever the commission shall function in any municipality and so long as it shall continue to do so, no action or proceeding shall be brought or prosecuted, the purpose of which is to affect the disposition of property or funds owned or controlled by the municipality, except as provided in this chapter

If any such municipality has in its possession or under its control, or there is in the possession or under the control of the commission, any property or funds of such municipality which are or may be available for the payment of interest or principal upon any of the debts of such municipality (over and above the payment of the current operating expenses of the municipality and the maintenance of a reasonable working capital), then such municipality in its discretion may apply, or if directed by the commission shall

apply, to the superior court to determine the application and distribution of such property or funds to and among the creditors of the municipality, and in any such case the superior court in its discretion may permit an application for relief of the same character to be made by any creditor of the municipality. In any such proceeding all creditors of the municipality shall be made parties thereto in such manner and upon such notice by publication or otherwise as the superior court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds.

In case any such proceeding shall be instituted, the superior court may direct the municipality to make no payments from any of such moneys so available until the determination of the proceeding or until permitted by the superior court. Unless and until such a direction shall be made, payments may be made by such municipality on account of principal and interest as the municipality may determine and as may be approved by the commission.

52:27-33.3. Court may vacate, modify or restrict statutory stay. Upon the application of any creditor made upon notice to the municipality and the commission, the superior court may vacate, modify or restrict any statutory stay contained in this article.

52:27-34. Complaint by creditors; plan of adjustment or composition; parties; notice. Upon the verified complaint of any creditors of a municipality in which the commission shall function, made on behalf of themselves and all other creditors of the municipality, for the approval of a plan of adjustment or composition of the claims of all creditors or of a class or classes of them similarly situated, which plan shall be submitted with and made a part of the complaint, the superior court by a judge thereof may take jurisdiction of the subject matter and order the filing of the complaint in the office of the clerk of the superior court.

The municipality and the commission shall be made parties to such proceeding. All creditors of the municipality shall be made parties thereto by notice to be published and given in such manner as the superior court may direct. Any creditor of the municipality may appear and assert his rights.

52:27-35. Allegations in complaint. In the complaint the creditors shall allege that the municipality is or will be unable to pay in full according to their terms the claims proposed to be adjusted or composed and perform its public functions and preserve the value of property subject to taxation, that the adjustment or composition proposed in the plan is substantially measured by the capacity of the municipality to pay, is in the interests of all the creditors affected thereby, and is not detrimental to other creditors of the municipality.

52:27-36. Approval by superior court of plan of adjustment or composition; findings. In any such proceeding, after hearing on the plan proposed or on the plan as modified by order and if such plan as proposed or modified is approved in writing by creditors representing 85 per cent in amount of the indebtedness affected thereby and by the municipality and the commission, the superior court may by order authorize and approve such adjustment or composition if the court determines (1) that the municipality is unable to pay in full according to their terms the claims proposed to be adjusted or composed, and perform its public functions and preserve the value of property subject to taxation, (2) that the adjustment or composition is substantially measured by the capacity of the municipality to pay, (3) that it is in the interest of all the creditors affected thereby, and (4) that it is not detrimental to other creditors of the municipality.

52:27-38. Continuance of stay of proceedings against municipality; action by creditor to enforce claim restricted. After the institution of any proceeding provided for by this article and pending the determination thereof, the superior court may by order continue the stay provided by sections 52:27-32.1 and 52:27-33 of this title.

In the event that a plan shall be authorized and approved pursuant to this article the court shall retain jurisdiction of such proceeding and thereafter no creditor whose claim is included in such adjustment or composition shall be authorized to bring any action or proceeding of any kind or character for the enforcement of his claim except with the permission of the superior court and then only to recover and enforce the rights given him by the adjustment or composition.

52:27-62. Remedies; enforcement of judgments, etc.; bringing of actions or proceedings stayed; exceptions. Whenever the commission shall function in a municipality having a school district coterminous therewith which is governed by the provisions of chapter 7 of the title Education (§18 7-1 et seq.)

a No judgment, levy or execution against such school district or the property thereof for the recovery of the amount due on any bonds, notes or other obligations of the school district, in the payment of which such school district has defaulted shall be enforced until otherwise specially ordered by the superior court in an appropriate proceeding for such purpose, after notice to the commission, and the enforcement of any such judgment, decree, levy or execution shall be and it hereby is stayed until otherwise specially ordered as aforesaid,

b No action or proceeding of any kind either direct or ancillary, shall be brought against such school district, municipality, or any public officers for the assessment, levy or collection of taxes for such school district and any and all actions or proceedings therefor shall be and they hereby are stayed, except that first, a judge of the

superior court, after notice to the commission may authorize 1 or more creditors of such school district to bring and maintain an action or proceeding therefor in the superior court, which shall be brought for the benefit of themselves and all other creditors of such school district and in which all other creditors of such school district shall have the right to intervene and assert their claim and in which all other creditors of such school district may, and such commission shall, be made parties in such manner and upon such notice as the superior court shall approve, and except that, second, the commission may bring and maintain an action or actions by way of a proceeding in lieu of prerogative writ or by any other appropriate proceeding or proceedings for the assessment, levy or collection of taxes for such school district for the payment of principal or interest of the indebtedness of the school district found to be outstanding as provided in section 52 27-46 of this title, without limiting its power otherwise to direct the assessment, levy or collection of taxes, the superior court in any such proceeding may, to the extent which it shall deem just and equitable, afford to the holders collectively of any due and unpaid claims against a school district any remedy which might be afforded under any other law to any individual creditor in any proceeding in lieu of prerogative writ for the assessment, levy or collection of taxes, to the same extent as if there had been an entry of judgment in their favor, issuance of execution and return thereof unsatisfied, service thereof upon public officials and performance of any and all other conditions precedent to the affording of such relief under such other law, provided, that the court first be satisfied from proof submitted by affidavit or otherwise that the claims for the enforcement of which such remedy is sought are claims upon which a judgment could be obtained,

c No civil action shall be brought or prosecuted, the purpose of which is to affect the disposition of property or funds owned or controlled by the school district, except as herein provided, if any such school district has in its possession or under its control, or there is in the possession or under the control of the commission, any property or funds of such school district which are or may be available for the payment of interest or principal upon any of the debts of such school district (over and above the payment of the current operating expenses of the school district and the maintenance of a reasonable working capital), then such school district in its discretion may apply, or if directed by the commission shall apply, to the superior court to determine the application and distribution of such property or funds to and among the creditors of the school district, and in any such case the superior court in its discretion may permit an application for relief of the same character to be made by any creditor of the school district, in any such proceeding all creditors of the school

district shall be made parties thereto in such manner and upon such notice by publication or otherwise as the superior court shall approve, and any creditor may appear therein and assert his rights to receive all or any part of such property or funds, in case any such proceeding shall be instituted, the superior court may direct the municipality to make no payments from any of such moneys so available until the determination of the proceeding or until permitted by the superior court, unless and until such a direction shall be made, payments may be made by such municipality on account of principal and interest as the municipality may determine and as may be approved by the municipal finance commission,

d Upon the application of any creditor made upon notice to the school district and the commission, the superior court may vacate, modify or restrict any statutory stay contained in this article

52:27-63. Plan of adjustment or composition of claims of creditors; procedure; effect.

a Whenever the commission shall function in any municipality having a school district co-terminous therewith which is governed by the provisions of chapter 7 of the title Education (§18 7-1 et seq), then, upon the verified complaint of any creditors of such school district made on behalf of themselves and all other creditors of the school district for the approval of a plan of adjustment or composition of the claims of all creditors or of a class or classes of them similarly situated, which plan shall be submitted with and made a part of the complaint, the superior court by a judge thereof may take jurisdiction of the subject matter and order the filing of the complaint in the office of the clerk of the superior court. The school district and the commission shall be made parties to such proceeding. All creditors of the school district shall be made parties thereto by notice to be published and given in such manner as the superior court may direct. Any creditor of the school district may appear and assert his rights. In the complaint the creditors shall allege that the school district is or will be unable to pay in full according to their terms the claims proposed to be adjusted or composed and perform its public functions and preserve the value of property subject to taxation, that the adjustment or composition proposed in the plan is substantially measured by the capacity of the school district to pay, is in the interests of all the creditors affected thereby, and is not detrimental to other creditors of the school district or of the municipality.

b In any such proceeding, after hearing on the plan proposed or on the plan as modified by order and if such plan as proposed or modified is approved in writing by creditors representing 85 per cent in amount of the indebtedness affected thereby and by the school district and the commission, the superior court may by order

authorize and approve such adjustment or composition if the court determines (1) that the school district is unable to pay in full according to their terms the claims proposed to be adjusted or composed, and perform its public functions and preserve the value of property subject to taxation, (2) that the adjustment or composition is substantially measured by the capacity of the school district to pay, (3) that it is in the interest of all the creditors affected thereby, and (4) that it is not detrimental to other creditors of the school district or of the municipality

c The plan of adjustment or composition so authorized and approved shall forthwith and without any further action of any kind be binding upon all the creditors included in such plan, whether or not they appear in such proceeding, and in so far as said plan provides for the substitution of any new bonds, notes, or other obligations of the school district in place of any outstanding bonds, notes or other obligations or claims then outstanding, such substitution shall be effectual from and after such date as may be fixed in such order

d After the institution of any proceeding provided for by this section and pending the determination thereof, the superior court may by order continue the stay provided by section 52 27-62 of this title In the event that a plan shall be authorized and approved pursuant to this article, the court shall retain jurisdiction of such proceeding and thereafter no creditor whose claim is included in such adjustment or composition shall be authorized to bring any action or proceeding of any kind or character for the enforcement of his claim except with the permission of the superior court and then only to recover and enforce the rights given to him by such adjustment or composition

e Notwithstanding any provisions of this article, the commission shall not approve any adjustment or composition, or plan presented pursuant to this section, which provides for the reduction in the principal amount of any outstanding notes or bonds of the school district

52:27BB-17. Enforcement of process. If a person subpoenaed or ordered under the provisions of section 16 fails to obey the subpoena, submit to examination, answer legal and pertinent questions, or produce books, papers, accounts or other documents when ordered, the director may apply to the superior court for an order directing such person to show cause why he should not comply with the subpoena or order

52:27BB-19. Enforcement of orders. Orders of the director may be enforced by an action in lieu of prerogative writ or by injunction in appropriate cases, or by suit in equity to compel the specific performance by the officers or governing bodies of political subdivisions of the orders of the director or of the duties imposed by law

52:28-33. Jurisdiction of offenses committed on the river Delaware. The judicial investigation and determination of any capital or other offense, trespass or damage committed within and upon the water of the river Delaware, which this state is entitled to enjoy and exercise, by virtue of sections 52 28-23 to 52 28-28 of this title, shall belong to and be exercised by the county court and officers of the county lying and being nearest to the place where such offense, trespass or act was committed, as fully as if said place was within the body of such county, and it shall be lawful to describe said offense, trespass or act as having been committed in or upon the water of the river Delaware in the said county.

52:30-4. Application for appointment of commissioners to adjudge and extinguish easements. Whenever the United States or any officer thereof has or may hereafter, in pursuance of law, lease or purchase any lands within this state for government purposes, and it may be desirable that any street, highway or public places laid out upon any map of said lands should be vacated, the attorney general, by direction of the governor, shall on request of said lessee, owner, officer or proper authority of the United States, apply to the superior court of this state for the appointment of commissioners to examine into and adjudge the true value of any rights, ways, easements or servitudes in or upon said lands and to acquire and extinguish the same

52:30-5. Appointment of commissioners; oath. The judge of the superior court to whom the application is made may appoint 3 disinterested freeholders as commissioners Before entering upon the discharge of their duties, the commissioners shall severally take an oath faithfully, impartially and justly to perform all the duties required of them by this article

52:30-7. Commissioners to fix time and place of hearing; summons; contents, service and publication. The commissioners shall fix a time and place of meeting in some place near said lands and summon to attend and be heard before them, at such time and place, all persons claiming to hold encumbrances thereon, and also all persons claiming to have lawfully acquired any right, way, easement or servitude in, over or upon said lands

The summonses shall declare that the state of New Jersey is about to take for the public use of the United States all said rights, ways, easements or servitudes and that the commissioners are about to ascertain the values thereof respectively

The summonses shall be served upon all residents of this state known to the commissioners to be claimants or encumbrancers of or upon the land, or as holders of any rights, ways, easements or servitudes therein or thereon The

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summonses shall be served by agents to be appointed by the commissioners as summonses issued out of the superior court of this state are required by law to be served, and in like manner, upon all persons claiming to be entitled to any such private ways, easements or servitudes

The commissioners shall also publish for 1 month in at least 2 newspapers printed and published in the county in which said land is situate, a like summons, addressed to all persons not residents in the state and to all persons resident in or out of the state, who claim to be owners of encumbrances upon said tract of land or to be entitled to any said rights, ways, easements or servitudes, requiring such persons to attend and be heard before the commissioners at the time and place fixed by the commissioners

Such service and publication shall constitute due notice to all persons interested of the intention of the state to take said private ways, easements or servitudes for the public use of the

United States, and due notice to such persons of the opportunity afforded them to be heard thereon.

52:30-9. Awards; payment into supreme court; payment to claimants. After the hearing before the commissioners they shall ascertain the value of each said private way or other easement or servitude and make an award thereof in writing and file the same in the office of the clerk of the superior court

On the payment of the amount of the award and the cost of the proceedings to the clerk of the superior court, the said court shall give notice, in such manner as it shall prescribe, to the several claimants of the funds named in the award, and to all other persons claiming the same, to appear before it and present their claims thereto The superior court shall adjudge the validity of their claims and order payment thereof as it shall deem equitable and just

PROPOSED REVISION

Title 53. STATE POLICE

53:4-2. Failure to obey subpoena of superintendent; procedure before superior court. In case any person summoned in accordance with the provisions of section 53 4-1 of this title shall refuse to obey the subpoena or to give testimony or answer questions, or to produce any book, paper or document as required, any judge of the superior court may, upon application to him and proof of the refusal, make an order awarding process of subpoena or subpoena duces tecum out of said court for such witness to appear and testify before the superintendent or deputy superintendent of state police and to produce such books, papers or documents as may be required The court may make such further orders as may be necessary to secure the appearance and testimony of the witness and the production by him of any books, papers, or documents before the superintendent or deputy superintendent of state police.

Upon filing the order awarding process of subpoena in the office of the clerk of the superior court, the clerk shall issue, under the seal of the court, a subpoena requiring the witness to appear before the superintendent or deputy superintendent of state police at a time and place

mentioned therein, and so from day to day until the examination of the witness shall be completed, which subpoena may contain a direction that the witness bring with him to the examination any books, papers or documents mentioned therein The clerk shall also issue, under the seal of the court, such other orders in reference to the appearance, examination and production of books, papers or documents before the superintendent or deputy superintendent as the court may direct

53:4-3. Failure to obey subpoena or order of court; arrest and hearing; imprisonment. If any person, not being the husband or wife of the person under investigation, summoned by subpoena issued by the clerk of the superior court as provided in section 53 4-2 of this title shall refuse to obey the subpoena or any direction therein, or to give testimony or answer questions as required, or to produce any books, papers or documents, or shall refuse to obey any order made by the superior court, the superintendent or deputy superintendent may, upon affidavits proving the facts, apply to such court for an attachment against such person as for contempt

PROPOSED REVISION

Title 54. TAXATION

54:1-17. Oaths administered; contempt. The director of division of taxation of the department of treasury or any of the employees of the department delegated or deputized to sit for him shall have power to administer oaths to any person to ascertain any facts which will enable them properly to perform the duties of their office, and may reduce the statements of the person sworn to writing, and require him to swear and subscribe thereto, and may, ex parte, apply for and obtain from a judge of the superior court an order to compel any person to submit to examination in reference to such matters. Failure to comply with such order may be adjudged to be a contempt of court.

54:1-37. Assessor not complying with law removable by court. An assessor who shall willfully or intentionally fail, neglect or refuse to comply with the constitution and laws of this state relating to the assessment and collection of taxes shall be subject to removal from office by the superior court in the manner hereinafter in this article prescribed.

Source L 1921, c 271, p 800, §1 [1924 Suppl §*136-1220C(2)]

54:1-38. Action to remove. If the director of the division of taxation shall, after investigation, find that an assessor has willfully or intentionally failed, neglected or refused to comply with the constitution and laws of this state relating to the assessment and collection of taxes, he may bring an action in the superior court to remove the said assessor, which action shall proceed in all respects as provided in the rules of the superior court, applicable to summary proceedings.

Source L 1921, c 271, p 800, §2 [1924 Suppl §*136-1220C(3)]

54:1-39. No change

54:2-17. Members may administer oaths and examine witnesses; contempt punished. Each member of the division of tax appeals shall have power to administer oaths and examine witnesses, and shall have the same power as the county court to issue subpoenas to compel the attendance of witnesses and the production of all necessary reports, books, papers, documents, correspondence and other evidence at any designated place of hearing. The subpoenas shall be authenticated by the seal of the division of tax appeals, and either party to a proceeding before the division may secure from it subpoenas without charge. Misconduct on the part of a person attending a hearing or the failure of a witness when duly subpoenaed to attend, give testimony

or produce any records, shall be punishable by the county court of the county in which the division shall then be sitting, in the same manner as such failure is punishable by that court in a case therein pending.

Source L 1931, c 100, p 168, §8

54:2-21. Commission to take testimony of foreign witnesses. If a material witness in a proceeding, hearing or appeal pending before the division of tax appeals, resides without this state, the division or the president thereof, on affidavit or proof thereof to its or his satisfaction, and on such terms as it or he may direct, may award and issue, under the seal of the division, a commission empowering any officer or person authorized under applicable rule of the supreme court, to take the testimony of such witness on oath or affirmation.

Source L 1931, c 240, p 592, §1

54:2-23. Notice to adverse party. Ten days' notice in writing, exclusive of Sundays, of the time and place of such examination and of the names of the witnesses to be examined shall be given to the adverse party or his attorney so that he may be present and put interrogatories if he shall see fit. When testimony is to be taken of a witness residing in a foreign state or kingdom, or in a state or territory of the United States west of the Mississippi river, the division of tax appeals or its president shall direct the number of days notice to be given of the taking thereof.

Source L 1931, c 240, p 592, §1

54:2-25. Testimony may be taken stenographically before officer. When the testimony is taken before an officer authorized to administer oaths by the laws of this state, it may be taken stenographically by or in the presence of the officer named in the notice. Before taking the testimony the stenographer, other than the officer named in such notice, shall be sworn by the officer carefully, faithfully and impartially to take the evidence and to make a true and correct transcript thereof. The oath shall be in writing and shall be attached to and be a part of the return of the officer named in the notice. It shall not be necessary for testimony taken in accordance with the provisions of this section to be subscribed by the deponent.

Source L 1931, c 240, p 593, §4

54:2-26. Documentary evidence; exhibits; copies as evidence. Documentary evidence exhibited before the officer taking testimony, or exhibits proved by a witness may be annexed to and returned with the depositions of the wit-

nesses so taken, or the officer shall, if requested by the party exhibiting the documentary evidence or producing the exhibits, mark it as an exhibit in the proceeding and return it to the party offering it, and cause a copy thereof to be made and attached to the examination or deposition, and the copy shall be received in evidence in all respects as if the original were annexed to and returned with the examination or deposition

Source L 1931, c 240, p 593, §5

54:2-29. Delivery of testimony by officer. If the testimony is taken before an officer authorized to administer oaths by the laws of this state, it may be certified, annexed to the commission and delivered by the officer taking it to the secretary of the division of tax appeals or any member thereof

Source L 1931, c 240, p 594, §8

54:2-30. Validity of testimony. The examination of a witness by commission or deposition taken, returned and filed, as provided in sections 54 2-21 to 54 2-32 of this title, shall be as competent evidence in the proceeding in which it shall be taken as if the witness had been examined in open court on the hearing thereof, proof being made that notice of the taking thereof was given as provided by section 54 2-23 of this title

Source L 1931, c 240, p 594, §9

54:2-31. Excluding or overruling depositions. Any deposition or examination taken under sections 54 2-21 to 54 2-32 of this title shall be subject to be excluded or overruled in whole or in part according to the opinion of the division of tax appeals, upon objection taken to the competency of the witness, the materiality or competency of the evidence given, or the regularity of the questions put, but shall not be excluded for any irregularity or informality in taking or returning it if the division shall be satisfied that the testimony of the witness has been fairly and truly taken and returned. If the deposition or examination shall be admitted in evidence by the division, no exception shall be taken to the admission thereof on the ground of any irregularity or informality in taking or returning it.

Source L 1931, c 240, p 595, §10

54:3-23. Disobedience of witness treated as contempt; punishment. In case of the willful failure of a person to obey any such order of a county board of taxation, or to answer any inquiry properly put to him upon such examination, the board shall immediately certify the facts to the county court of the county, and a judge thereof shall thereupon issue an order requiring the person to appear before him and show cause why he should not be punished for his refusal to comply with the order or to answer the inquiry. If the judge shall determine upon the hearing that the refusal to obey the order or to answer the inquiry was willful and without

justification, he shall punish the offender as for a contempt of court

54:4-61. When assessment not to be set aside. No assessment of taxes shall be set aside in a proceeding in lieu of prerogative writ, because the state, county or municipal taxes, or any of them, are blended together, nor because the aggregate amount of money levied or assessed in a taxing district for taxes is greater than called for by the law or resolutions granting the same, nor because the assessment is made upon any person or property at a rate higher than authorized by the law, ordinance or resolutions granting the money for which the assessment of taxes is made

Source L 1918, c 236, p 870, §512 [1924 Suppl §208-66d(512)]

54:4-62. Court may review and reduce assessments. If it shall appear to the satisfaction of the court in such proceeding that the assessment is at a rate higher than authorized by the law or resolution authorizing the assessment, or that the value of taxable property for which a person is therein assessed, is too great, the court shall amend the assessment and reduce it to the proper and just amount, and thereupon affirm it according to the amendment and reduction and reverse it as to the excess only.

Source L 1918, c 236, p 870, §512 [1924 Suppl §208-66d(512)]

54:4-63. Court may make rules and regulations. The court may adopt such rules and proceedings as may enable it to make the amendment, and carry into effect the true intent and meaning of section 54 4-62 of this title. No return of taxes or list of delinquents made by a collector, nor the proceedings concerning such return, nor any tax warrant, shall be set aside or reversed for any lack of form which does not impair the substantial rights of the plaintiff in such proceeding

Source L 1918, c 236, p 870, §512 [1924 Suppl §208-66d(512)]

54:4-82. Hearing on debtor's ability to pay. Upon presentation of a complaint, duly verified, setting forth that the plaintiff is in the custody of the sheriff or jailer of the county for the non-payment of a tax, that he is without sufficient goods and chattels whereof to make a distress and without means of payment of the tax and costs, the county court shall thereupon appoint a time and place for the examination of the plaintiff, and shall direct the sheriff or jailer to cause the plaintiff to be present at the examination. Notice of the application, and of the time appointed for the hearing thereof, shall be given to the legal representative of the municipality wherein the tax was levied, who may be present and be heard in relation to the application. After the examination of the plaintiff, the court may order his discharge, or order his release upon condition that he shall pay the tax and costs assessed against him in such manner

as the circumstances of the case shall warrant. A person released upon condition that he shall pay the tax and costs, who shall violate the condition of the order releasing him, may be taken into custody and kept in confinement until the tax and costs are paid.

Source L 1914, c 211, p 422, §2 [1924 Suppl §208-444n]

54:4-123. Receiver of rents and income from real property in municipality for collection and satisfaction of delinquent taxes; bond not required. That at any time after any taxes or any installment thereof heretofore or hereafter levied and assessed against real property in any municipality shall have been delinquent for more than 6 months and remain due and unpaid, the collector or other officer charged with the collection of taxes in such municipality, hereinafter designated the "collector", may, by and with the approval of the governing body of such municipality, and upon 5 days' notice to the owner, make application to the superior court, to be appointed receiver ex officio of the rents and income of such real property for the purpose of collecting and satisfying out of such rents and income the delinquent taxes against such real property, together with the penalties, interest and costs, and such costs and expenses of the receivership as may be adjudged by the court. Such receiver shall not be required to give bond other than his official bond, and shall be appointed only for the purpose of collecting and satisfying the delinquent taxes, penalties, interest and costs and expenses as aforesaid.

54:4-128. Complaint for appointment of receiver; prima facie evidence. The complaint for the appointment of such receiver shall set forth

a That such delinquent taxes remain due and unpaid at the date of filing such complaint,

b That the collector has exercised due diligence to collect such delinquent taxes, and

c That he verily believes that such real property is income-producing, or, if the property is not income-producing, that it can be leased and thereby made to become income-producing, and that the collection of such delinquent taxes can be made through a receivership of the rents and income from such real property, and

d Whether or not such real property is encumbered by a first mortgage and if so, the name and address of such first mortgagee.

The complaint shall be verified, and shall be prima facie evidence of the facts therein stated.

54:4-129. Appeal from or contest of taxes assessed and levied; limitation on taxes to be collected by receiver; stay of collection; refund or collection on disposition of appeal or contest. In the event that it is made to appear to the court that the owner or any person interested in such real property has filed an appeal from or is contesting the taxes assessed and levied against such real property, the court shall limit the amount of taxes to be collected by the receiver to the portion of such delinquent taxes which are

not in substantial dispute and, if the parties are unable to agree upon the amount thereof, same shall be ascertained by the court, and an order shall be made to stay the collection of the disputed portion of the taxes until the final determination of the proceedings to review said taxes. Thereupon, in the event that such appeal or contest shall be sustained to any part or all of such taxes so collected, the court shall order the collector to pay back and return to such owner or person interested in such real property, such part or all of such taxes so collected to which appeal or contest has been sustained, and in the event that such appeal or contest is not sustained, then the receiver shall proceed to collect from such rents and income any uncollected portion of such delinquent taxes, penalties, interest and costs and expenses as aforesaid.

54:5-10. Judicial proceedings affect liens only when lis pendens filed. No judicial proceeding shall operate to stay the enforcement of any municipal lien, unless the court shall so order, nor unless due notice of the order describing the land and naming the owner shall be filed as a notice of lis pendens in the office of the county clerk or register of deeds, as the case may be, of the county where the lands are situate.

54:5-45. No review after 18 months; purchasers unaffected. No proceeding in lieu of prerogative writ shall be allowed to review a sale of land to enforce an assessment or tax, or a sale where assessments and taxes have been included together, after 18 months from the date of the sale. This shall not apply to proceedings taken after the sale, by the purchaser or holder of the tax sale certificate, under a statute to procure a deed or perfect title.

Source L 1903, c 174, p 348, §14 [C S p 407, §14], as am L 1915, c 323, p 580, §1 [1924 Suppl §32-14], L 1925, c 21, p 77, §1

54:5-82. No judicial proceeding after 2 years. In the absence of fraud, no proceeding in lieu of prerogative writ shall be allowed, and no action shall be brought to contest or set aside the certificate of sale, notice and affidavit of service so recorded as a deed, or to recover possession of the lands so conveyed, after the expiration of 2 years from the date of their record.

Source L 1918, c 237, p 896, §48 [1924 Suppl §208-444a (51)]

54:5-84. Infants and mental incompetents. If a delinquent owner or lienor shall be, at the time of the expiration of the time limited for the redemption of the real estate in which he is interested, an infant under the age of 21 years, or an idiot, or then shall have been judicially decided a person of unsound mind, the right to redeem shall not be barred by service of notice as provided in this article so long as such impediment shall continue, but shall be barred only by complaint to foreclose and judgment thereon after proceedings have been taken according to the rules of the supreme court, for the protection of the rights of such person.

54:5-85. Construction of article. The provisions of this article shall be liberally construed as remedial legislation to encourage the barring of the right of redemption by suits in the superior court, and for the adjudging marketable titles therein

Source L. 1918, c 237, p 897, §49, as am L. 1919, c 231, p 564, §1 [1924 Suppl 208-444a(52)], L. 1928, c 211, p 382, §1, L. 1929, c 139, p 241, §1, L. 1933, c 200, p 436, §1

54:5-86. Bill to foreclose right to redeem; joinder of causes; right continues until barred. The purchaser, his heirs or assigns, in addition to the remedy provided by article 8 of this chapter (§54 5-77 et seq), may at any time after the expiration of the term of 2 years, whether notice to redeem has been given or not, file a complaint to foreclose the right of redemption and may join therein 2 or more separate actions or causes of actions founded upon 2 or more certificates of sale of the same or different tracts of land having a common owner, whether or not such actions or causes of action have a common question of law or fact, or arose out of the same transaction or series of transactions, subject, however, to such limitations as may be fixed by the rules of the supreme court as to joinder of such actions. On filing the complaint the right to redeem shall exist and continue until barred by the judgment of the superior court, chancery division

Note of Reporter. See Rule 3 20-1

54:5-87. Jurisdiction of court; effect of judgment; reopening. The superior court, chancery division, upon the filing of a complaint to foreclose the right of redemption, may give full and complete relief under this chapter, in accordance with other statutory authority and with the practice of the court, to bar the right of redemption and to foreclose all prior or subsequent alienations and descents of the lands and encumbrances thereon, except subsequent municipal liens, and to enter a judgment that an absolute and infeasible estate of inheritance in fee simple be vested in the purchaser. The judgment shall be final upon the defendants, their heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, and no application shall be entertained to reopen the judgment after the time limited by the rules of the supreme court

Source L. 1918, c 237, p 897, §49, as am L. 1919, c 231, p 564, §1 [1924 Suppl 208-444a(52)], L. 1928, c 211, p 382, §1, L. 1929, c 139, p 241, §1, L. 1933, c 200, p 436, §1

54:5-87.1. Parties; cestui que trust, ward, beneficiary, etc. It shall not be necessary in prosecuting any action to foreclose or bar the right of redemption to make any cestui que trust, ward, beneficiary, holder of bonds, certificates, shares or other interests in a mortgage, parties defendant, but any order or judgment entered therein shall be as binding and effective as though

they had been made parties to such action, provided that any trustee of fiduciary designated in such mortgage, or his or its successor, be made a party defendant to such suit

Nothing in this section shall be deemed as indicating that, prior to the passage of this act, it was necessary to make such cestui que trust, ward, beneficiary, holder of bonds, certificates, shares or other interests in a mortgage, parties defendant

54:5-87.6. Cestui or cestuis que trust not necessary party defendant in action to foreclose liens or certificates. It shall not be necessary in prosecuting any action to foreclose any municipal lien, tax title lien or tax title lien certificate or certificates to join as party or parties defendant any cestui que trust or cestuis que trust of any interest, right, claim or title, held in, on or to the aliened premises or to any interest therein or thereon by a trustee or fiduciary for the benefit of such cestui que trust or cestuis que trust, but any order or judgment entered therein shall be as binding and effective as though they had been made parties to such suit or proceeding

Nothing in this section shall be taken to indicate that prior to the passage of this act it was necessary to make such cestui or cestuis que trust parties

54:5-87.7. Repeal This has been added to 54 5-87 6.

54:5-87.8. Joinder of separate causes of action to foreclose by municipality. A municipality may join in a complaint to foreclose the right or rights of redemption of lands, title to which has been acquired by it by purchase at sales held to enforce tax or other municipal liens, 2 or more separate actions or causes of action to foreclose such rights of redemption, whether or not such actions or causes of action have a common question of law or fact, or arose out of the same transaction or series of transactions, subject, however, to such limitations as may be fixed by the rules of the supreme court as to joinder of such actions

Note of Reporter See Rule 3 20-1

54:5-88. Unknown owners; procedure. If the owner or owners or some of them are unknown to, or cannot, after due inquiry, be ascertained by the holder of the tax certificate, and the lands at the time of the sale have been assessed against an unknown owner, or against a named person, and a careful and diligent search of the indexes in the office of the surrogate and county clerk or register of deeds and mortgages in the county in which the lands so conveyed are situate, and in the office of the secretary of state, does not disclose the name of an owner having a record chain of title to the lands described in the certificate of sale, extending back at least 60 years next preceding the date of the sale, the suit may proceed in the same manner as if all

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the owners were known, making unknown owners parties thereto by the name "unknown owner, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest" and they shall be so designated throughout the cause, and the suit shall proceed against them by publication of notice under order, according to the rules of the supreme court

54:5-89. Repeal

54:5-90. Judgment; failure to redeem; notice posted; limitation as to attack on decree. The court shall enter such judgment against the unknown owners, by the designation aforesaid, as if they had been named in the proceedings and personally served with process, and upon their failure to redeem the lands their equity of redemption shall be foreclosed and barred without further publication, but notice of the date limited for redemption, the place to redeem and the amount necessary to redeem shall be posted upon the lands affected by the action, at least 20 days before the date so fixed. No such judgment, after it has been entered for more than 5 years, shall be attacked on the ground of insufficient inquiry for the name or address of any defendant, his heirs, assigns or personal representatives, even though the same might have been ascertained by such inquiry

Effective July 16, 1948

54:5-91. "Unknown owners" defined; joining known and unknown owners permissible. Any person whose interest in the lands cannot be ascertained from the search of the title of the premises described in the certificate of sale, made in the county and state records as aforesaid, shall be deemed to be included in the classification "unknown owner, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest" In any case where an examination of the aforementioned records discloses a record of ownership of the lands, or a part thereof, in some person or persons by purchase or descent they may be joined as defendants with unknown owners in the same suit

Source L 1918, c 237, p 897, §49, as am L 1919, c 231, p 564, §1 [1924 Suppl §208-444a(52)], L 1928, c 211, p 382, §1, L 1929, c 139, p 241, §1, L 1933, c 200, p 436, §1

54:5-91.1. Repeal Same as 54 5-87 6

54:5-91.2. Repeal Same as 54 5-87 6 (revised).

54:5-92. Affidavit attached to bill; contents. There shall be filed with every complaint to foreclose a tax certificate filed against "unknown owner, his heirs, devisees, and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest",

an affidavit of inquiry as required by the rules of the supreme court, and an affidavit of search of the person who made the search and examination required under section 54 5-88 of this title
Source L 1918, c 237, p 897, §49, as am L 1919, c 231, p 564, §1 [1924 Suppl §208-444a(52)], L 1928, c 211, p 382, §1, L 1929, c 139, p 241, §1, L 1933, c 200, p 436, §1

54:5-93. Affidavit of search; contents. The affidavit of the person making the search shall contain a sufficient statement on the part of the deponent to show that he has made a complete search of all indexes containing the names of persons leaving wills or on whose estate letters of administration have been issued, as shown by the records of the county and in the office of the secretary of state, for the purpose of ascertaining the name of the owner or owners of said land, and also a complete search of all indexes of grantors and grantees, mortgagors and mortgagees, in the county, against the name of any person against whom the lands were assessed, as shown by the assessment books in the municipality where the lands are situate, for a period of 40 years immediately prior to the commencement of suit, if there be such records for that period of time, and if for a lesser period of time, then from such time as the records are available. The affidavit shall state that as a result of said examinations deponent verily believes that the allegations of the complaint are true, in so far as they relate to the subject matter of the examinations and the results thereof

Source L 1918, c 237, p 897, §49, as am L 1919, c 231, p 564, §1 [1924 Suppl §208-444a(52)], L 1928, c 211, p 382, §1, L 1929, c 139, p 241, §1, L 1933, c 200, p 436, §1

54:5-94. Repeal.

54:5-95. Affidavit by title company making search. When the search or examination is made by a title company the affidavit may be made by an officer of the company, but in any event the search and affidavit shall both be made by a person disclosed by the affidavit or by supplemental affidavit or affidavits to be competent to examine titles

54:5-96. Search fees. No search fee in excess of \$10 00 and no counsel fee, where such counsel fee is allowable under the rules of the supreme court, shall be allowed a complainant other than a municipality, in the foreclosure of a tax lien unless, prior to the filing of the complaint, the complainant shall have given 90 days' written notice to the interested owners and mortgagees whose interest appears of record by registered mail with postage prepaid thereon, addressed to the last known address of such owners and mortgagees of intention to file such complaint. The notice shall also contain the amount due on such tax lien as of the date of the notice

Source L 1918, c 237, p 897, §49, as am L 1919, c 231, p 564, §1 [1924 Suppl §208-444a(52)], L 1928, c 211, p 382, §1, L 1929, c 139, p 241, §1, L 1933, c 200, p 436, §1

54:5-97. Lands situate in more than 1 county; searches. When the lands are located in more

than 1 county the examination and search shall be made in the offices hereinbefore indicated, in each of the counties in which the lands are situate

54:5-98. Redemption after complaint filed; costs and counsel fees allowed. After the complaint has been filed redemption shall be made in that cause only, provided notice of the suit has been filed in the office of the tax collector. The court shall, upon application at any time after complaint filed, allow costs which shall include reasonable fees for an examination of the title to the lands described in the complaint, disbursements incurred by the purchaser and his counsel, and such counsel fees, commensurate with the services rendered, as may be allowable under the rules of the supreme court, in addition to the other fees and expenses in this chapter provided

Source L 1918, c 237, p 897, §49, as am L 1919, c 231, p 564, §1 [1924 Suppl §208-444a(52)], L 1928, c 211, p 382, §1, L 1929, c 139, p 241, §1, L 1933, c 200, p 436, §1

54:5-99. Evidence of payment of subsequent liens required. No judgment in foreclosure shall be entered, except in cases where a municipality is the plaintiff, unless evidence is produced in the foreclosure action that all subsequent municipal liens have been paid to the time of the commencement of the action

Source L 1918, c 237, p 897, §49, as am L 1919, c 231, p 564, §1 [1924 Suppl §208-444a(52)], L 1928, c 211, p 382, §1, L 1929, c 139, p 241, §1, L 1933, c 200, p 436, §1

54:5-100. Validity of sale and proceedings must be attacked by answer. In an action to foreclose the right of any defendant therein named to redeem lands from the lien of a certificate of sale thereof issued for nonpayment of taxes or other municipal lien, the validity of the tax or other municipal lien for which the sale was made and certificate issued, and the validity of the proceedings to sell the lands shall be conclusively presumed unless a defendant shall by answer set up as a defense thereto the invalidity of the tax or other municipal lien or the invalidity of the proceedings to sell or the invalidity of the sale

Source L 1925, c 202, p 480, §1

54:5-101. Stay. If defendant shall answer and set up as a defense the invalidity of the tax or other municipal lien, or of the proceedings to sell, or the sale, such answer shall operate as a stay of the proceedings in the said court for 4 months from the date of such answer, to enable such defendant to take appropriate proceedings under the rules of the supreme court to review the legality of the lien, the proceedings to sell, or the sale, and if such review is sought the proceedings shall be stayed until the final determination of the review shall have been made

Source L 1925, c 202, p 480, §2

54:5-102. Failure to take proceedings for review; striking answer. If the defendant fails to

take appropriate proceedings to review for the purposes mentioned in section 54 5-101 of this title within 4 months after the filing of the answer, the court shall strike out such part of the answer as denies the validity of the tax or other municipal lien, or the legality of the proceedings to sell, or the sale, and shall proceed as if no such defense had been interposed

Source L 1925, c 202, p 480, §2

54:5-103. Proceedings to review; limitation of time. No proceeding to review shall be taken in any case where an action has been instituted to foreclose the right of any owner, mortgagee or other person having an interest in the lands, unless an answer has been filed within the time limited, nor shall such proceeding be taken after the expiration of 4 months from the filing of an answer denying the validity of the tax or other municipal lien for which the lands were sold and the certificate issued, or denying the legality of the proceedings to sell the lands, or denying the legality of the sale

Source L 1925, c 202, p 480, §3

54:5-104. Judgment bars redemption only in land described therein. When a complaint to foreclose the right of redemption, as provided in this article, has or shall have been filed, and the complainant has described or does describe the lands, in said complaint, in a manner other than that contained in the certificate of tax sale, any judgment entered barring the defendant's right to redeem shall bar his interest in and to all the lands described in the judgment, and that property only

Source L 1929, c 177, p 333, §1, suppl to L 1918, c 237, p 883

54:5-104.33. No personal judgment shall be entered. In any proceeding under this act, no personal judgment shall be entered against any person

54:5-104.34. Time for institution of action. No action may be instituted under this act on any tax sale certificate unless

a More than 2 years have expired from the date of the tax sale out of which any such certificate arose.

b No part of any general land taxes levied and assessed for the 4 calendar years next preceding the date of the complaint against the land covered by such certificate has been paid.

54:5-104.36. Jurisdiction. The superior court shall have jurisdiction to give full relief, in rem, as prescribed in this act. It shall have jurisdiction of proceedings instituted pursuant to this act, and the practice and procedure shall be in accordance with the rules of the supreme court

54:5-104.37. Proceedings commenced by verified complaint; fees of clerk. Proceedings under the provisions of this act shall be commenced by the filing of a complaint in the superior court. The fees to be paid to the clerk of the court for

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the filing of said complaint shall be \$25 00, except when a complaint demands foreclosure of more than 25 certificates, in which case the clerk shall be entitled to 50 cents for each certificate in excess of 25

54:5-104.38. Form of complaint. The complaint shall set forth

a The tax foreclosure list,

b The name of the person or 1 of the persons who, according to the records in the office of the county recording officer, appears as a transferee or purchaser of title to the land to be affected by the tax foreclosure proceedings, and the book and page or date and instrument number of the instrument by which such person acquired title, or the word "unknown" if no such person can be discovered by a search of the records of ownership in the county recording officer's office for a period of 60 years next preceding the preparation of the tax foreclosure list,

c A demand for judgment pursuant to this act

The complaint may also include a description by metes and bounds of the land to be affected

54:5-104.39. Complaint may include several parcels. Any number of separate parcels of land may be included in 1 complaint

54:5-104.40. Separate causes of action. Each certificate and the parcel or parcels of land affected thereby shall be deemed to be the subject of a separate cause of action, in rem

54:5-104.41. Complaint to be filed with tax collector; county recording officer and attorney general. The plaintiff shall file a copy of the complaint in the office of the municipal tax collector, and in the office of the county recording officer. A copy of said complaint shall also be filed in the office of the attorney general of the state of New Jersey

54:5-104.42. Notice. The copy of the complaint filed in the office of the county recording officer and the publication of the notice as hereinafter provided shall be notice to the world including all persons claiming any right, title, interest in or lien upon the land sought to be affected by said complaint, whether the names of said persons appear in said complaint or not, of the institution of said foreclosure proceedings in rem, and that unless said lands be redeemed in the cause as hereinafter provided, the right, title, interest or lien of any such persons and the claim of any or all other persons, whether such right, title, interest, lien or claim has or shall have become vested or shall have arisen or may arise prior to or subsequent to the filing of said complaint, shall be foreclosed and forever debarred and that an indefeasible estate in fee simple in said lands shall be vested in the plaintiff, by the judgment of the said court, as provided in this act

54:5-104.43. Complaint to have effect of notice to state. The copy of said complaint filed in the

office of the attorney general of the state of New Jersey shall be notice to the state of New Jersey, including any agency of the state, and any political subdivision thereof having an interest in or lien upon the land to be affected, that such proceedings have been instituted, in rem, against said land

54:5-104.44. Duties of county recording officers.

Upon the filing of such copy of the complaint, the county recording officer shall forthwith cause the proceedings to be indexed in the name of all persons appearing in the tax foreclosure list and in the complaint under the requirement of section 54:5-104.38 of this title, in the same index used for notices of lis pendens, and the filing of said complaint shall be noted in the margin of the record of each certificate of tax sale referred to in said complaint

54:5-104.45. Fees of county recording officer.

The county recording officer, for filing and indexing such copy of the complaint and the making of such marginal notation, shall be entitled to the same fees to which he would be entitled for the filing, indexing and noting of a notice of lis pendens

54:5-104.46. Publication. The court shall, upon application of the plaintiff, make an order designating 1 newspaper, circulating in the municipality wherein the lands to be affected are located, for the publication of a notice of foreclosure in the form hereinafter required. Upon such designation being made, the plaintiff shall cause such notice to be published once in the designated newspaper

54:5-104.47. Form of notice to be published. Such notice shall include a copy of the tax foreclosure list and shall be substantially in the following form

NOTICE OF IN REM FORECLOSURE OF TAX LIEN TITLES

By . . . (Here insert name of municipality)

Take notice that proceedings, in rem, have been commenced in the . . . (here insert name of court) by the filing of a complaint on . . . (here insert date) to foreclose and forever bar any and all rights of redemption of the parcels of land, described in said complaint, from plaintiff's tax lien titles

The proceedings are brought against the land only, and no personal judgment or decree may be entered therein

Any person desiring to protect a right, title or interest in the described land or any parcel thereof, by redemption, or to contest plaintiff's right to foreclose, must do so by paying the amount required to redeem as set forth below, plus interest to the date of redemption, and such costs as the court may allow, at the tax collector's office prior to the entry of a judgment herein, or by filing an answer to the complaint setting

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forth defendant's defense, within 35 days after date of the publication of this notice

In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcels of land described in the following tax foreclosure list

The following is a copy of the tax foreclosure list, showing the lands against which these proceedings are brought

(Here insert copy of tax foreclosure list)

Publication date (Here insert date of publication)

Attorney for plaintiff

54:5-104.48. Notice to municipality; by owners or parties in interest. At any time after the enactment of this act, any owner of land or mortgagee thereof, or any person having a lien or claim thereon, or interest therein, may file with the tax collector of the taxing district wherein such land is located, a notice stating his name, residence and post-office address, and a description, as shown in the last tax duplicate of the municipality, of the parcel of land in which such person has an interest, which notice shall continue in effect for a period of 5 years, unless earlier canceled by such person

54:5-104.49. Mailing of notice. Any plaintiff under this act may, within 15 days after the date of publication of said notice of publication, mail or cause to be mailed a copy of said notice to the attorney general of the state of New Jersey, and to each person whose name appears as an owner in said tax foreclosure list, to the last known address of such owner, as the same may appear upon the last municipal tax duplicate; and may, likewise, mail a copy of such notice to such other persons who, pursuant to section 54 5-104 48 of this title, have filed a notice with the tax collector specifying a title, lien, claim or interest in any of the lands sought to be affected by said complaint. Such notice need not be by registered mail. Neither the failure of the plaintiff to mail any such notice of publication, nor the failure of any persons to receive such notice, shall affect the validity of any proceedings brought pursuant to this act

54:5-104.50. Posting of notices. The plaintiff shall, within 15 days after the date of the publication of said notice, cause a copy of such notice to be posted in the office of the tax collector of the plaintiff municipality, and in the office of the county recording officer of the county in which the land to be affected by the proceedings is situated, and in 3 other conspicuous places within the taxing district in which the land is located.

54:5-104.51. Proof of publication and posting. Plaintiff shall file in the cause affidavits of pub-

lication and posting in accordance with the order of publication and of the provisions of this act. No final judgment shall be entered as to any parcel of land until such affidavits have been filed as herein provided

54:5-104.52. Answer may be filed; fee for filing. Any person having or claiming to have a right, title or interest in, or to, or lien upon any parcel of land described in the complaint may file an answer within 35 days of the date of the publication of notice provided in section 54 5-104 47 of this title, setting forth in detail the nature of the defendant's interest and the grounds of his defense. The caption of such answer shall refer to the cause or causes of action applicable to the land affected. Each person filing such answer shall pay to the clerk of the court the same fee required for the filing of answers in other cases.

54:5-104.53. Certain omissions no defense. No omission of any of the procedures or actions required by law in relation to levy and assessment shall be a defense or objection to the foreclosure of any tax lien title, unless it be also made to appear to the court that such omission has been prejudicial to the answering defendant

54:5-104.54. Certain defenses allowed; review; stay of proceedings. In any proceeding brought under the provisions of this act, if a defendant shall answer and set up as a defense thereto the invalidity of the tax lien, or the invalidity of the proceedings to sell, or the invalidity of the sale, such answer shall operate as a stay of the proceedings in the said court for 2 months from the date of the filing of such answer, to enable such defendant to take appropriate proceedings under the rules of the supreme court to review the legality of the tax lien, the proceedings to sell, or the sale, and if such review is sought, the proceedings shall be stayed until the final determination of the review shall have been made

54:5-104.55. Failure to seek review; striking. If the defendant fails to take appropriate proceedings to review for the purposes mentioned in section 54 5-104 55 of this title within 2 months after the filing of the answer, the court shall strike out such part of the answer as denies the validity of tax lien, or the legality of proceedings to sell, or the sale, and shall proceed as if no such defense had been interposed.

54:5-104.56. Review; time for. No proceeding to review shall be taken in any case under this act unless an answer has been filed within the time limited, nor shall such proceeding be taken after the expiration of 2 months from the filing of an answer denying the validity of the tax lien for which the lands were sold and certificate issued, or denying the legality of the proceedings to sell the lands, or denying the legality of sale

54:5-104.57. Court to determine on complaint and answer. Upon the filing of an answer, the

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court shall hear and determine the issues raised by the complaint and answer, in the same manner and under the same rules as it hears and determines other issues

54:5-104.58. Severance upon filing of answer. Upon the filing of an answer, there shall be a severance of the proceedings as to the parcel or parcels of land which have been made the subject of such answer. The proceedings in respect to such parcel or parcels of land shall be deemed to be separate and distinct, and the plaintiff shall be liable for and shall pay to the clerk of said court the fees and costs as in the case of the commencement and prosecution of a new, separate and distinct proceeding

54:5-104.59. Fees and costs. The court shall, upon application, at any time after the complaint is filed, fix the costs of the proceedings, which shall include disbursements incurred by the plaintiff and by its attorney, and such counsel fee, commensurate with the services rendered, as may be allowable under the rules of the supreme court, in addition to other fees and expenses provided by law and the rules regulating the practice and procedure of the court, which costs and fees shall be equitably apportioned and allocated to the several parcels of land affected by the proceeding, and added to the amount required to redeem

54:5-104.60. Redemption at tax collector's office. Redemption shall be made at the office of the tax collector, at any time after the filing of complaint, and before final judgment. Such redemption shall be deemed to be made in the cause, and it shall be subject to the fixing of fees and costs of the proceedings as provided in section 54:5-104.59 of this title

54:5-104.61. Statement of redemption to be filed by plaintiff; to operate as discharge of notice; tax collector to deliver certificate of redemption. Upon such redemption, the plaintiff or its attorney shall promptly file a statement with the clerk of said court, setting forth that redemption has been made in respect to any parcel of land described in the petition. Plaintiff or its attorney shall also file a similar statement with the county recording officer, which shall operate to discharge the notice hereinafter provided in section 54:5-104.42 of this title insofar as said notice relates to the land so redeemed. Any person making redemption as herein provided, shall be entitled to receive, from the tax collector, a certificate of redemption and a duplicate thereof, and may file such duplicate with the county recording officer, in lieu of, and with the same effect as, a statement of redemption filed by a plaintiff or its attorney, as in this section provided.

54:5-104.62. Right of plaintiff to discontinue. The plaintiff shall have the right to discontinue, without notice and without costs, as to any par-

cel of land affected by any proceeding under this act. The filing of a copy of the order of discontinuance with the county recording officer shall operate as a discharge of the proceedings as to the parcel of land affected thereby. The recording officer shall charge 50 cents for each parcel of land affected by such discharge

54:5-104.63. Proof where no answer filed; judgment. As to any parcel concerning which no answer has been filed, or, in the event an answer has been filed, and the defendant has failed to take appropriate proceedings for review pursuant to the provisions of section 54:5-104.55 of this title, the court shall, by the complaint, proofs of publication and posting, and by affidavit of non-redemption, determine whether or not there has been a compliance with the provisions of this act and, if satisfied that there has been such compliance, shall make a final judgment granting the relief provided herein

54:5-104.64. Form and effect of judgment.

a Such judgment shall describe the lands affected by the description and identification thereof as the same appears in the complaint and tax foreclosure list, and shall identify each parcel of land affected by such judgment by the name of the persons appearing in such complaint and tax foreclosure list, and the book and page or date of record or instrument number, where the record of each foreclosed certificate of tax sale may be found in the office of the county recording officer. Such judgment may also contain a description by metes and bounds of any parcel, together with such other identifying description as the plaintiff may desire to insert

b The judgment shall give full and complete relief, in accordance with the provisions of this act, and in accordance with any other statutory authority, and with the practice of the court, to bar the right of redemption, and to foreclose all prior or subsequent alienations and descents of the lands and encumbrances thereon, and to adjudge an absolute and indefeasible estate of inheritance in fee simple in the lands therein described, to be vested in the plaintiff

c Such judgment shall be binding and final upon all persons having a vested or contingent title or interest in or lien or claim upon or against said lands, including the state of New Jersey, and any agency and political subdivision thereof, and their heirs, devisees and personal representatives, and their, or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest, notwithstanding any infancy or incompetency of such person or persons, and upon all other persons, their heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest

54:5-104.65. Effect of recording judgment. Upon the recording of a certified copy of such

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judgment in the office of the county recording officer, the plaintiff shall be seized of an estate in fee simple, in the lands described therein, absolute and free and clear of all liens and encumbrances, in accordance with the terms of said judgment

54:5-104.66. Additional duty of county recording officer; fee. Upon the recording of such judgment, the county recording officer shall note, in the margin of each certificate referred to therein, the following

"Judgment recorded on . . . (here insert date), . . . (here insert book and page or instrument number)," for which such recording officer shall charge 35 cents for each notation

54:5-104.67. Application to reopen judgment. No application shall be entertained to reopen such judgment after 3 months from the date of the recording thereof in the office of the county recording officer, and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the action.

54:5-104.68. Constitutional clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but such adjudication shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly invalidated in and by such judgment

54:5-105. Jurisdiction of courts; proof required. A judge of the superior court or of the county court may by order direct the county clerk or register of deeds, as the case may be, to cancel of record any tax sale certificate of record in the county if he shall be satisfied by proof that the holder of the tax sale certificate has been fully paid all moneys expended by him for the tax sale certificate, including all expenses incurred by him, and lawful interest thereon according to law

Source L 1932, c 21, p 33, §1

54:5-107. Notice; persons entitled to. The judge shall order notice of the application to be served on the holder of record of the tax sale certificate, if living, and if not living, upon his executor or administrator, or, if there shall be no executor or administrator, upon the next of kin of the holder of record of the tax sale certificate

Source L 1932, c 21, p 33, §1

54:5-108. Notice; service; substituted service, publication and mailing. If a person entitled to notice is a resident of this state the notice shall be served in the same manner as a summons. If a person entitled to notice is a nonresident of this state, or cannot, upon due inquiry, be found therein, the notice shall be served by publication, in the manner provided by the rules of the supreme court for absent defendants

Source. L 1932, c 21, p 33, §1

54:5-109. Notice to unknown owners; publication. If upon due inquiry a party in interest has been unable to ascertain whether the holder of record of the tax sale certificate is living or dead, and has been unable to ascertain the names or residences of any of his next of kin notice shall be directed to the holder of record of the tax sale certificate, by name, and his heirs, devisees and personal representatives, and shall be served by publication in the manner provided by the rules of the supreme court for absent defendants

Source L 1932, c 21, p 33, §1

54:5-110. Notice to corporations; service. If the holder of the certificate is a corporation notice of the application shall be served in the manner as process may be served upon corporations in actions against corporations. If a receiver is appointed of such corporation, service may be made upon the receiver, or, if the corporation be adjudged a bankrupt, service may be made upon the trustee in bankruptcy of the corporation, or, if dissolved by proclamation of the governor, service may be made upon the statutory trustees of the corporation, or as provided for in such cases in actions against corporations. Such other notice shall be given as the court shall prescribe

Source L 1932, c 21, p 33, §1

54:8-3. Destruction of records; determination of amounts due; jurisdiction of chancery. In case of the loss or destruction of public records whereby taxes which are unpaid and are a lien upon real estate are liable to be lost by reason of the inability of the municipality to enforce them under existing law without further power which will enable it to ascertain in a judicial manner the amount of the taxes and the extent and character of the particular real estate upon which they constitute a lien, the superior court, chancery division, shall have authority and jurisdiction to inquire into, determine and fix the amount of such taxes and the interest and penalties thereon, and to declare and adjudge the extent and character of the particular real estate upon which the taxes constitute a lien, and to enforce the collection thereof

Source L 1904, c 187, p 336, §1 [C S p 5185, §235]

54:8-4. Proceedings by complaint; statements. The proceedings in such cases shall be by complaint filed by the municipality desiring relief, whenever the governing board thereof shall by resolution deem it proper to proceed. The complaint shall state the years for which taxes are claimed to be in arrears, the amount thereof as nearly as can be ascertained, the designation of the real estate by block and street number or other brief description, and the names of the owners thereof, if known or ascertainable by reference to the records of deeds of the county in which the real estate is situate

Source L 1904, c 187, p 336, §2 [C S p 5185, §236]

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54:8-5. Demand for discovery; copy of complaint served. The complaint may demand discovery upon oath from any former or present owner or mortgagee made a party to the proceedings, or may require discovery without oath, but the answers of the parties to such demand for discovery shall not have any other force or effect upon the hearing of the case than if made without oath. No summons shall be required to be issued upon the filing of the complaint, but the proceedings shall be summary in nature and in accordance with the rules of the supreme court applicable to such proceedings. Service upon 1 of 2 or more joint tenants or tenants in common shall be sufficient to confer upon the court jurisdiction of all the joint tenants or tenants in common with respect to the subject matter of the suit.

54:8-6. Repeal Rules, and see 54:8-5 as revised
Source L 1904, c 187, p 336, §2 [C S p 5185, §236]

54:8-7. Repeal Rules 3 79 etc See 54:8-7 as revised

54:8-8. Repeal Rules, and see 54:8-5 as revised

54:8-9. Repeal Rule 3 20-1 controls

54:8-10. Repeal Rules 3 26, 3 31

54:8-11. Repeal Court has power to enforce orders for contempt.

54:8-12. Enforcement of lien; alternative procedure. When it shall be established by the judgment of the court in any case that there is a lien for unpaid taxes against any real estate, the lien may be enforced and collected by the municipality to which it is due in the same manner and to the same effect as provided by law with respect to other taxes upon real estate therein, and the judgment of the court shall be conclusive of the existence of the lien and the amount due thereon, or, in the discretion of the court, execution may issue to enforce the lien by a sale of the property as in other cases
Source L 1904, c 187, p 339, §6 [C S p 5187, §240]

54:8-13. Repeal Rules 1 2-5, 4 2-5

54:8-14. Costs and fees not recoverable. No costs shall be recovered by either party against the other. No fees shall be charged or paid to the state for any services of the judge or clerk, except that copies of papers certified by the clerk shall be paid for as in other cases
Source L 1904, c 187, p 340, §7 [C S p 5187, §241]

54:8-15. Copy of judgment filed; abstract; contents. A certified copy of the final judgment in every case wherein a lien for taxes is established shall be filed in the office of the collector or receiver of taxes or other officer charged by law with the custody of the records of unpaid taxes. An abstract thereof showing the land affected, the amount of the taxes, the years in

which assessed, and the names of the defendants in the suit, shall be entered in a suitable book kept for that purpose

54:8-16. Legal assistants; compensation. The mayor or other chief executive officer of any city, town, borough or village, the township committee of any township, and the governing body of any other municipality proceeding under this article may appoint 1 or more special solicitors and other necessary assistants to aid in the prosecution of these suits, but no such solicitor shall be appointed in any city except with the concurrence of the city counsel or other regular legal advisor. The compensation of the special solicitors and other assistants shall be fixed in cities, boroughs and villages by the mayor or other chief executive officer, and in all other municipalities by the governing body. In all cases it shall be paid by the municipality
Source L 1904, c 187, p 340, §10 [C S p 5187, §244]

54:10A-19.2. Appeal to division of tax appeals; stay of enforcement; review.

a Any aggrieved taxpayer may, within 3 months after any decision, order, finding, assessment or action of the commissioner made pursuant to the provisions of this act, appeal therefrom to the division of tax appeals, by filing a petition of appeal with said division in the manner and form prescribed by the said division and on giving security, approved by the commissioner, conditioned to pay the tax heretofore levied, if the same remains unpaid, with interest and costs

b No such appeal shall stay the collection of any tax or the enforcement of the same by entry as a judgment, unless by order of such division, and then only after security approved by the commissioner or said division has been furnished to the commissioner. The judgment or order of the division of tax appeals respecting any matter arising under the provisions of this subtitle may be reviewed by a proceeding in lieu of prerogative writ in the same manner as other judgments of said division

54:10A-20. Injunction as one of remedies for collection. In addition to other remedies for the collection of the tax imposed by this chapter, the attorney general may of his own motion or upon the request of the commissioner, whenever any tax due under this chapter shall have remained in arrears for a period of 3 months after the tax shall have become payable, apply to the superior court, chancery division, by complaint filed in the name of the state and in the manner provided by the rules of the supreme court, for an injunction to restrain such corporation from the exercise of any franchise or the transaction of any business within this state until the payment of such tax and penalties and interest due thereon, and the costs of such application, to be fixed by the court. Upon the granting and service of such injunction it shall not be lawful for such

company thereafter to exercise any franchise or transact any business in this state until such injunction be dissolved

54:10A-31. Limitations; cancellation of taxes barred; rights not affected. When a corporation franchise tax return shall have been duly filed in accordance with the provisions of this act or of chapters 13 or 32A of Title 54 of the Revised Statutes, no tax shall be assessable or payable after 10 years from the date of such filing or after 1 year from the effective date hereof, whichever is later. The commissioner is hereby authorized to cancel all assessments of taxes, interest and penalties, the collection of which is barred by the limitations herein provided and to destroy returns and records relating thereto which are rendered useless by the provisions of this act. Nothing herein contained, however, shall affect the rights of the state (a) under any certificate of debt, decree or judgment for taxes, interest and penalties duly recorded with the clerk of the former supreme court or the clerk of the superior court, or with any county clerk, or (b) to assess and enforce collection of any tax, interest and penalties pursuant to the terms of any bond or other agreement securing the payment of such tax, interest and penalties. Source L 1947, c 51, §5, supp L 1945, c 162

54:10B-19. Injunction as additional remedy. In addition to other remedies for the collection of the tax imposed by this chapter, the attorney general may of his own motion or upon the request of the commissioner, whenever any tax due under this chapter shall have remained in arrears for a period of 3 months after the tax shall have become payable, apply to the superior court, chancery division, by complaint filed in the name of the state and in the manner provided by the rules of the supreme court, for an injunction to restrain such taxpayer from the exercise of any franchise or the transaction of any business within this state until the payment of such tax and penalties and interest due thereon, and the costs of such application, to be fixed by the court. Upon the granting and service of such injunction it shall not be lawful for such taxpayer thereafter to exercise any franchise or transact any business in this state until such injunction be dissolved. Source L 1946, c 174, §19

54:11-6. Proceedings against delinquent corporation. After a corporation of this state has failed for the space of 2 consecutive years to pay the taxes imposed upon it by law, and the state tax commissioner has reported the corporation to the governor as provided in this chapter, the attorney general may proceed against such corporation in the superior court, for the appointment of a receiver, or otherwise. Source L 1905, c 259, p 509, §5 [C S p 5294, §516], as am L 1931, c 196, p 494, §3, suppl to L 1884, c 159, p 232.

54:11-7. Decree for tax due; execution to issue. Upon a proceeding pursuant to section 54 11-6 of this title, the court shall ascertain the amount of taxes remaining due and unpaid by the corporation to this state and enter a judgment for the amount so ascertained. Thereupon execution shall issue for the collection thereof as other debts are collected.

54:11-8. Transfer of intangible corporate assets to receiver for sale. If no property which may be seized and sold on fieri facias shall be found within this state sufficient to pay the judgment, the court shall further order that the corporation shall, within the time limited after service of such notice as the court shall direct, assign and transfer to the trustee or receiver appointed by the court, any chose in action, or any patent or patents, or any assignment of, or license under any patented invention or inventions owned by, leased or licensed to or controlled in whole or in part by such corporation, to be sold by the receiver or trustee for the satisfaction of the judgment. No injunction theretofore issued nor any forfeiture of the charter of the corporation shall be held to exempt it from compliance with the order of the court.

If the corporation shall fail, within the time limited after the service of notice of the judgment, to assign and transfer the same to such receiver or trustee for sale as aforesaid, the court shall appoint a trustee to make the assignment thereof, in the name and on behalf of the corporation, to the receiver or trustee appointed to make the sale. Source L 1905, c 259, §5, as am L 1931, c 196, §3

54:14-6. Injunction against exercise of powers by delinquent corporation. In addition to other remedies for the collection of a tax imposed by chapters 12 to 15 of this title (§54 12-1 et seq.), when the same shall have been in arrears for 3 months after becoming payable, the attorney general may of his own motion or upon the request of the state tax commissioner apply to the superior court, chancery division, by complaint filed in the name of the state, for an injunction to restrain the corporation from the exercise of any franchise or the transaction of any business within this state until the payment of such tax and interest due thereon and the costs of such application as fixed by the court.

Upon the granting and service of such injunction such corporation shall not thereafter exercise any franchise or transact any business in this state until the injunction is dissolved.

54:15-4. Review after expiration of appeal; judgment reducing tax by consent. If a petition of appeal is not filed within the time prescribed by section 54 15-1 of this title, the right to appeal to the state board of tax appeals shall be deemed waived and the amount of tax levied shall be payable and collected as other taxes levied by such board, but if thereafter an appeal is taken from the judgment of the board on be-

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half of the corporation within the time limited by the rules of the supreme court for such appeal, the attorney general may, on being satisfied that the assessment is incorrect, and without taking testimony or proof, consent to a judgment reducing the tax or assessment to the amount due on the actual issue of the capital stock of the corporation

Source L 1897, c 89, p 178, §2 [C S p 5293, §511], as am L 1916, c 10, p 26, §2, L 1921, c 110, p 229, §1, L 1923, c 44, p 88, §1 [1924 Suppl §208-511], suppl to L 1884, c 159, p 232

54:29A-36. Judicial review. If a taxpayer, or the attorney general on behalf of the state, or the authorities of any taxing district shall desire to review the final determination of the division of tax appeals, such review shall be made by appeal to the appellate division of the supreme court

54:29A-37. Scope of review. If it shall be made to appear on such appeal that the final determination of the division of tax appeals in respect to any such assessment or tax in controversy is illegal, excessive, insufficient, or that there has been illegal discrimination in the assessment, the court shall correct, adjust and equalize such assessment and tax or refer same back to the director of the division of taxation, department of the treasury, who shall correct, adjust and equalize the assessment and tax in accordance with the instructions or decision of the court

54:29A-38. Payment pending litigation. If a taxpayer shall take an appeal to review the final determination of the division of tax appeals, it shall pay to the state treasurer, as a condition for prosecuting the appeal, the amount of the taxes then not in substantial controversy. If the taxpayer and the attorney general or the authorities of the taxing district, as the case may be, are unable to agree on the amount of taxes then not in substantial controversy, such amount shall be determined by the appellate division. Upon the payment of the amount of taxes then not in substantial controversy, the payment or collection of the remainder of the taxes shall be stayed until the final determination of the appeal, notwithstanding any law to the contrary.

Source L 1941, c 291, §38

54:29A-39. Irregularities; collateral attack. In any action or proceeding, except on complaint before the state board of tax appeals or on appeal to the appellate division of the superior court, the certificate and report of the director of the division of taxation shall be conclusive and shall have the force and effect of a judgment of a court of record having competent jurisdiction and the proceeding whereon such certificate and report are founded shall not be inquired into. No assessment or tax shall be set aside for misnomer of the owner of the property assessed but the name may be corrected at any time by

the director, the division of tax appeals or the court

Source L 1941, c 291, §39

54:29A-40. Fees. The appellant under 54:29A-36 of this title shall pay 8 cents per folio to the director of the division of taxation and the state comptroller for returns made by them of proceedings under this act

Source L 1941, c 291, §40

54:29A-52. Penalties. If any taxpayer shall willfully neglect to make returns as required by this act, he or it shall forfeit as a penalty not exceeding \$10,000 00 for each offense to be assessed by a jury. The penalty shall be recovered by an action at law in the superior court, brought in the name of the state, and shall be paid into the state treasury. The commissioner shall certify any such default to the attorney general, who shall prosecute the action for the penalty

Source L 1941, c 291, §52

54:29A-57. Entry of judgment. As an additional or alternative remedy, the director of the division of budget and accounting, department of the treasury, may issue a certificate to the clerk of the superior court that a taxpayer is indebted under this or any former act for the taxation of railroads in such an amount as shall be named in such certificate, and thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon his record of docketed judgments the name of such taxpayer, and of the state, the amount of the debt so certified, a short name of the tax, and the date of making such entries. The making of the entries shall have the same force and effect as the entry of a docketed judgment in the office of such clerk, and the director shall have all of the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in an action at law upon contract, but without prejudice to the taxpayer's right of appeal

54:29A-58. Suit to enforce lien. In any case where there has been a refusal or neglect to pay any tax heretofore or hereafter assessed to any taxpayer under this or any other act, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, the attorney general at the request of the director of the division of budget and accounting, department of the treasury, may institute a civil action in the superior court to enforce the lien of the state for the tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent taxpayer or in which it has any right, title, or interest, to the payment of such tax

54:29A-59. Parties to proceedings. All persons having liens upon or claiming any interest in the property or rights to property sought to

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be subjected as aforesaid shall be made parties to such proceedings and be brought into court

54:29A-60. Adjudication and judgment. The court shall, after the parties have been duly notified of the proceedings, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property and rights to property in question, and, in all cases where a claim or interest of the state therein is established, may direct a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the state

54:29A-61. Receivership. In any such proceeding, at the instance of the attorney general, the court may appoint a receiver to enforce the lien, or, upon certification by the director of the division of budget and accounting, department of the treasury, during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity

54:29A-65. Subpoenas. The director of the division of taxation may issue subpoenas to compel the attendance of witnesses and the production of books and papers. He shall have power to administer oaths to ascertain facts to enable him properly to perform his duties, and may reduce the statements of the person sworn to writing and require him to swear and subscribe thereto. The director may, ex parte, apply for and obtain from a judge of the superior court an order to compel a person to submit to examination in reference to such matters, and the judge may punish a person disobeying any such order as for a contempt.

54:33-2. Jurisdiction of ordinary. The appellate division of the superior court shall have jurisdiction to hear and determine all questions in relation to a tax levied under the provisions of chapters 33 to 36 of this title (§54 33-1 et seq.) *Source.* L 1909, c 228, p 335, §20 [C S p 5309, §556]

54:34-13. Appeal from appraisements or assessment of tax commissioner. Any interested person dissatisfied with the appraisal or assessment so made may appeal therefrom to the appellate division of the superior court on giving a bond, approved by a judge of the superior court, conditioned to pay the tax so levied, with interest and costs, if the same be affirmed by the court

54:35-13. Report of probate or grant of letters; penalty. The clerk of the superior court or the surrogate of the county shall, within 10 days after the probate of a foreign or domestic will, the filing of a copy of a foreign will or the taking out of letters of administration, notify the director of the division of taxation thereof in

writing. If the clerk or surrogate fails so to notify the director he shall be liable to a penalty of \$200 00, to be recovered in an action at law in the name of the state

54:35-14. Search of probate court records by tax commissioner. The director of the division of taxation or any of his employees may examine any and all papers, documents and files which now are or hereafter may be filed or lodged with the clerk of the superior court or the surrogate of any county or with any other official of this state or of any municipality thereof, or with any person or corporation, for the purpose of ascertaining what property, if any, is or shall be liable to the tax provided for by chapters 33 to 36 of this title (§54 33-1 et seq.)

54:35-15. Action for collection of tax and enforcement of lien. Any tax which has accrued under chapters 33 to 36, inclusive, of this title (§54 33-1 et seq.), and has not been paid, shall be sued for and shall be recoverable and the lien thereof, if any, shall be enforceable, by action instituted in the chancery division of the superior court, by and in the name of the director of the division of taxation, department of the treasury, which action shall conform to the practice prevailing in said division of said court. No issue which would have been cognizable on an appeal from the assessment of the tax under the provisions of section 54 34-13 of the revised statutes shall be heard or decided in the action for the collection of the tax and enforcement of the lien under the provisions of this section

A judgment entered in any such action shall have the same effect as other judgments entered in the superior court and shall constitute a lien, and execution shall issue thereon according to the rules and practice appertaining to other judgments entered in the superior court

54:35-16. Repeal. This section should be repealed. No necessity in view of R S 54 35-15

54:37-7. Enforcement of tax; complaint for accounting; remission of intangibles. If the official or body charged with the administration of the death tax laws of the domiciliary state shall, within 60 days after a notice is mailed pursuant to section 54 37-6 of this title file a complaint for an accounting in such estate with the probate court of this state, the court shall order such accounting. When the accounting has been filed and approved by the court, the court shall order the remission to the fiduciary appointed by the domiciliary state of sufficient of the intangible personalty, after payment of creditors in this state and expenses of administration in this state, to satisfy the claims of the domiciliary state for death taxes, interest and penalties

Source. L 1932, c 49, p 70, §3, suppl to L 1898, c 234, p 715

54:37-8. Final accounting not allowed until taxes paid. No executor or administrator shall

be entitled to a final accounting or discharge in any probate court of this state unless he has complied with the provisions of section 54 37-5 of this title.

54:38-10. Jurisdiction of appellate division. The appellate division of the superior court shall have jurisdiction to hear and determine all questions in relation to any tax imposed under the provisions of this chapter. Any executor, administrator, trustee, person or corporation liable for the payment of any tax imposed by this chapter may appeal to the appellate division for a review thereof upon giving bond, approved by a judge of the superior court, conditioned to pay said tax, together with interest and costs, if said tax be affirmed by the court.
Source L 1934, c 243, p 696, §10

54:39-15. Procedure to compel compliance with subpoena. If any person subpoenaed to attend any hearing refuses to appear, to be examined or to answer any question, or to produce any books or papers when ordered so to do by the director of the division of taxation, department of the treasury, or any of his assistants designated by him to conduct such hearing, the director or such assistant may apply to the superior court, law division, or any judge thereof upon proof by affidavit, for an order directing such person to show cause why he should not comply with the direction or order of the director, or of the assistant appointed by the director. Upon the return of such order, the court shall examine such person under oath, and such person shall be given an opportunity to be heard, and if the court shall determine that such person refused without legal excuse to obey the command of such subpoena, or to be examined, or to answer a question, or to produce any books, papers or other documents, which he was ordered to answer or produce, the court may order said person to comply forthwith with such subpoena or order, and failure to comply, may be adjudged to be a contempt of the court.
Source L 1935, c 319, p 1016, §206

54:39-59. Suit by state tax commissioner; process. The penalty or fine shall be sued for in the name of the state tax commissioner of New Jersey in any county district court of the county or municipal court of the municipality where the offense occurred.
Source L 1935, c 319, p 1030, §901
Note of Reporter See Rules 7 12A, 8 3-1 and 2

54:39-60. Commitment for nonpayment. If judgment be rendered for the plaintiff the court shall cause any defendant who may refuse or fail to forthwith pay the amount of the judgment rendered against him and all costs and charges incident thereto, to be committed to the county jail for any period not exceeding the period mentioned in article 8 of this chapter (§54 39-50 et seq.)
Note of Reporter See Rules 7 12A, 8 7-1 et seq

54:39-61. Repeal

54:39-62. Repeal

54:39-63. Costs. The costs recoverable in any such proceeding shall be the same as costs taxed in actions in said courts, and shall be recoverable by the commissioner in the event of the conviction of the defendant.
Source L 1935, c 319, p 1030, §901

54:40-42. Actions for penalties. Any penalty shall be sued for in the name of the director in any county district court of the county or municipal court of the municipality where the offense occurred. If judgment shall be rendered for the plaintiff, the court shall cause any defendant who may refuse or fail to pay forthwith the amount of the judgment rendered against him and all costs and charges incident thereto to be committed to the county jail for any period not exceeding 30 days. A defendant, upon serving the full period for which he shall be committed, shall upon his release from jail be entitled to have the judgment satisfied of record, and the certificate of the warden of said jail that the said defendant has been detained for the period specified in the commitment shall be sufficient warrant for the clerk of any court in which the judgment for the penalty and costs is docketed to discharge the same of record.

The costs recoverable in any such penalty proceeding shall be the same as costs taxed in actions in said court and shall be recoverable by said director in the event of the conviction of the defendant.

Effective May 20, 1947

54:40-43. Actions for injunctions. The director of taxation and finance may file a complaint in the superior court, chancery division, for an injunction to prohibit any habitual violation of this act, or any of the orders, rules or regulations made by the director, and every such action shall proceed according to the rules and practice of that court.

54:40-44. Appeals. The defendant in any proceedings instituted under this act may appeal from the judgment or sentence of the court in which proceedings shall have been taken. Such appeal shall be in accordance with the applicable rules of the supreme court.

54:40-45. Fines; disposition. All moneys collected in fines shall forthwith be forwarded by the magistrate or judge to the director. The director upon receipt of such moneys shall pay over the same to the treasurer of the state of New Jersey.

54:40-46. Fines; failure to forward; receipt for fine or costs; penalties. Any person who, having collected any fine for any violation of this act or who having received any forfeited moneys, shall fail within 30 days after final determination

by the magistrate, judge, or the appellate court to forward said fine to the director shall be guilty of a misdemeanor and subject to a penalty not exceeding \$500 00

It shall be the duty of any person who shall collect any fine or costs for any violation of this act, when so requested, to deliver to the offender a proper itemized receipt therefor. Any person who shall violate this provision shall be subject to a fine not exceeding \$25 00

54:40A-24. Penalty for transacting business when not licensed.

a Court proceedings for recovery. Any person who shall engage in any business or activity for which a license is required under the provisions of this act, without first having obtained a license to do so, or who, having had such a license, shall continue to engage in or conduct such business after any such license shall have been revoked, or during a suspension thereof, shall be liable to a penalty of not more than \$250 00, which penalty shall be sued for, and shall be recoverable in the name of the director, and each day that any such business is so engaged in or conducted shall be deemed a separate offense. Every county district court, criminal judicial district court and municipal court, within their respective jurisdictions, is hereby empowered to hear and determine any such action for the recovery of a penalty.

b. Commitment of defendant for nonpayment. If judgment be rendered for the plaintiff, the court shall cause any defendant who refuses or neglects to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, to be committed to the county jail for such period as the court shall determine, not exceeding 30 days

c Penalty for further violations. In case a person shall, after conviction of any violation of this act, be again convicted of another violation thereof, he shall be liable to a penalty of \$500 00 for each such violation, to be sued for and recovered in the manner above set forth. In case any defendant against whom judgment has been recovered for a penalty of \$500 00 shall fail or neglect to forthwith pay the amount of said penalty, the court shall commit him to jail in the manner above set forth, for such number of days not exceeding 90 days, as the court shall determine

d Disposition of penalties. All penalties recovered for violations of this act shall be paid to the director and by him accounted for and paid to the state treasurer as in the case of state taxes

e Costs. The costs recoverable in any such proceeding shall be the same as in other actions in said courts, and shall be recovered by the director in the event of the conviction of the defendant. If the judgment be for the defendant it shall be without costs against the director.

54:42-5. Procedure to compel witnesses to attend and to testify. If a person subpoenaed to attend any hearing refuses to appear, be examined or to answer any question, or to produce any books, records, papers, vouchers, accounts or documents, when ordered so to do by the director of the division of taxation, department of the treasury, or any deputy, auditor or investigator designated by him to conduct such hearing, the director or such deputy, auditor or investigator may apply to the superior court, law division, court or any judge thereof, upon proof by affidavit of the facts, for an order directing such person to show cause why he should not comply with the direction or order of the director, or of the deputy, auditor or investigator so appointed by the director. Upon the return of such order, the court shall examine such person under oath, and such person shall be given an opportunity to be heard, and if the court shall determine that such person refused without legal excuse to obey the command of such subpoena, or to be examined, or to answer a question, or to produce any book, paper, voucher, record, account or document, which he was ordered to answer or produce, the court may order him to comply forthwith with such subpoena or order, and failure to comply may be adjudged to be a contempt of court

54:44-3. Certification of debt; judgment; docket; procedure thereon. As an additional or alternative remedy, the director of the division of taxation, department of the treasury, may issue a certificate to the clerk of the superior court or to the clerk of the county court of any county, that any person is indebted under this subtitle in an amount named in the certificate and thereupon the clerk to whom the certificate shall have been issued shall immediately enter upon his record of docketed judgments the name of such person as defendant, and of the state as plaintiff, the amount of the debt so certified, a short name of the tax, and the date of making the entries. The making of the entries shall have the same force and effect as the entry of a docketed judgment in the office of such clerk, and the director shall have all of the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in an action at law upon contract but without prejudice to the taxpayer's right of appeal. Every person who shall be licensed to manufacture, distribute, transport, store, warehouse, import, offer for sale or sell alcoholic beverages, or to sell warehouse receipts, certificates, contracts or other documents given upon the storage of alcoholic beverages, under any law of this state shall, by the acceptance of such license, be deemed to have consented to the procedure set forth in this section.

54:46-1. Appeals from decisions of commissioner. Any person who shall be aggrieved by any decision of the commissioner denying any hearing requested hereunder, or by any order, finding or assessment having the effect of fixing, correcting, amending or modifying the amount of any tax to be paid by such person, or by any decision declining so to do, or by any certification of debt to the clerk of a court, may appeal from the action of the commissioner in making any such decision, assessment, finding or order, or issuing any such certificate, to the state board of tax appeals by filing a petition of appeal with that board within 60 days after date of such decision, order, finding, or assessment, in the manner and form and subject to such terms and conditions as the board shall by reasonable rules and regulations prescribe, but no such appeal shall stay the collection of any such tax or the enforcement of the same by entry as a judgment, unless as provided by order of such board, after giving security approved by the commissioner or the board

The judgment or order of the state board of tax appeals respecting any matter arising under the provisions of this subtitle may be reviewed by a proceeding in lieu of prerogative writ in the same manner as other judgments of said board
As amended L 1942, c 171, p 531, §8

54:49-12. Alternate remedy; certification of debt; effect as judgment; procedure. As an additional remedy, the director of the division of taxation, department of the treasury, may issue a certificate to the clerk of the superior court or to the clerk of the county court of any county, that any person is indebted under such state tax law in such an amount as shall be stated in the certificate, and such certificate shall contain a short name of the tax under which the said indebtedness arises, and thereupon the clerk to whom such certificate shall have been issued shall immediately enter upon his record of

docketed judgments the name of such person, and of the state, the address of the place of business where such tax liability was incurred, if shown in the certificate, the amount of the debt so certified, a short name of the tax, and the date of making such entries The making of the entries shall have the same force and effect as the entry of a docketed judgment in the office of such clerk, and the commissioner shall have all the remedies and may take all of the proceedings for the collection thereof which may be had or taken upon the recovery of a judgment in an action at law upon contract, but without prejudice to the taxpayer's right of appeal

Approved July 11, 1939

Source L 1936, c 263, p 811, §313

54:50-5. Procedure to compel witnesses to attend and to testify. If a person subpoenaed to attend any hearing under this subtitle refuses to appear, be examined or answer any question, or produce any books, records, papers, vouchers, accounts or documents when subpoenaed so to do by the director of the division of taxation, department of the treasury, or any deputy, the director or such deputy may apply to the superior court or to any judge thereof, upon proof by affidavit of such refusal, for an order directing such person to show cause before the court why he should not obey the demand of such subpoena Upon the return of such order, the court shall examine the person under oath, and the person shall be given an opportunity to be heard, and if the court shall determine that he refused without legal excuse to obey the command of such subpoena, or to be examined, or to answer any question, or to produce any books, papers, vouchers, records, accounts or documents which he was by subpoena commanded to answer or produce, the court may order said person to comply forthwith with such subpoena or order, and failure to comply may be adjudged to be a contempt of the court.

Source L 1936, c 263, p 815, §405

PROPOSED REVISION

Title 55. TENEMENT HOUSES AND PUBLIC HOUSING

55:11-6. Actions against violators. The board may bring an action against any person who has violated or assisted in the violation of any provision of this subtitle in the county district court of the county or the municipal court of the municipality where the violation occurred No warrant shall issue in any such action against any freeholder unless an affidavit shall first be filed with the court that such freeholder is about to abscond from this state.

Note of Reporter. See Rules 8 3-1 and 2

55:11-7. Summary hearing; judgment. After summary hearing the court, on being satisfied of the guilt of the defendant or defendants, shall render judgment for the plaintiff, which judgment shall be in the sum of \$100 00 if it shall appear from the evidence that the offense was willful, or in the sum of \$50 00 if it shall appear from the evidence that the offense was not willful

55:11-8. Execution; imprisonment for nonpayment and for successive violations. If judgment

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is rendered for the plaintiff the court shall forthwith issue execution against the goods and chattels and person of the defendant or defendants, and the court shall have power to cause a defendant who shall refuse or neglect to pay the amount of the judgment rendered against him and all costs and charges incident thereto, to be committed to the county jail for a period not exceeding 90 days. The court is further empowered, in case a defendant has been twice convicted of the violation of the same section of this subtitle, or of continuing the violation of which he was previously convicted, in addition to the payment of the penalty hereinbefore mentioned, to cause the defendant to be imprisoned in the county jail or county workhouse, with or without hard labor, for any number of days not exceeding 1 for each dollar of the penalty.

55:11-9. Repeal Unnecessary

55:11-10. Repeal See Rule 8 3-2(B) (3) (a)

55:11-11. Repeal See Rule 8 3-2

55:11-12. Nonresident or absent owners; attachment to recover penalty. In case the owner of any tenement house in this state, who resides out of the state, or who absconds from, or conceals himself within this state, shall have violated or assisted in the violation of any of the provisions of this subtitle, then the said board may proceed against the said nonresident or absent owner, to recover the penalty provided for such violation, by writ of attachment to be issued out of any county court or the superior court in this state against the personal property and real estate of such nonresident or absent owner, and the proceedings shall be the same as in other cases in attachment issued out of said courts.

55:11-13. Fence excluding light and air; penalty. Any person who shall erect or suffer to remain erected any fence or other structure designed or intended to exclude the light and air from any tenement house in this state shall be subject to a penalty of \$10 00 for every day such fence or structure remains after notice from the board to remove the same. Such penalty shall be recovered in the manner provided in sections 55 11-6 to 55 11-12 of this subtitle.

55:11-15. Enforcement of order that tenement be vacated. When the board shall order any

tenement house to be vacated under any provision of this subtitle, and the owner or occupants thereof shall refuse to vacate the same, the judge of the county district court or the county where the tenement house is located on the institution of an action for the vacation of any such tenement house shall issue an order directing the owner of such tenement house, the lessee of the whole house and the tenants thereof to show cause before him why such tenement house should not be vacated. On the return day of the order, if no good cause be shown for the refusal to vacate, the court shall issue an order directing any sergeant at arms of said court, or any constable, forthwith to dispossess the occupants of the tenement house complained of, and shall render judgment against the owner for the costs of the proceedings.

55:11-16. Search warrant to inspect tenement. When complaint is made on oath or affirmation before any judge of a county district court of the county or magistrate of a municipal court of the municipality where the building or structure is located, that the plaintiff believes that such building or structure is being unlawfully used as a tenement house, or that such building or structure is being used in violation of any provision of this subtitle, the judge or magistrate, on being satisfied that probable cause exists for such belief, shall forthwith issue a search warrant authorizing any officer or employee of the board to enter and search, examine and inspect such building or structure.

55:11-17. Enjoining violations or nuisances. In case any tenement house, building or structure, or any part thereof, is constructed, altered, converted or maintained in violation of any provision of this subtitle, or of any order or notice of the board, or in case a nuisance exists in any such tenement house, building or structure, or upon the lot on which it is situated, the board may institute an action in the superior court to prevent such unlawful construction, alteration, conversion or maintenance, to restrain, correct or abate such violation or nuisance, to prevent the occupation of such tenement house, building or structure, or to prevent any illegal act, conduct or business in or about such tenement house or lot.

PROPOSED REVISION

Title 56. TRADE NAMES, TRADE-MARKS AND UNFAIR TRADE PRACTICES

56:3-10. Jurisdiction of superior court; injunction; damages; profits. The superior court shall have jurisdiction in all cases arising or commenced under this article for the violation of any of the provisions thereof. Any person, association, organization or corporation filing, or causing to be filed, for registry, any label, trade-mark, term or design pursuant to the provisions of this article, may institute an action in the superior court against any person, association, organization or corporation, for the violation of any of the provisions of this article.

The superior court is empowered and required to enjoin the manufacture, counterfeiting, imitation, display, use, sale, offer of sale, circulating or uttering of any counterfeit or imitation of any such label, trade-mark, term or design of any such person, association, organization or corporation, and the sale or disposal of any goods, wares, merchandise or product of labor to which, or on which, any such counterfeit or imitation label, trade-mark, term or design is attached, affixed, printed, painted, stamped, impressed or displayed; or any goods, wares, merchandise or product of labor contained in any box, case, can or package to or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, impressed or displayed, and further to enjoin the manufacture, use, sale, offer of sale, or display, of any genuine label, trade-mark, term or design of any such person, association, organization or corporation filing the same as aforesaid, or the having in possession any such genuine label, trade-mark, term or design with intent that the same shall be used, sold, offered for sale or displayed, or the same applied, attached or displayed in any manner whatever to or on any goods, wares, merchandise or product of labor, or the selling, or offer to sell or dispose of, or having in possession with intent that the same shall be sold, offered for sale or disposed of, any goods, wares or merchandise in any box, case, can or package to or on which any such genuine label, trade-mark, term or design of any such person, association, organization or corporation is attached, affixed or displayed, and from making any other, or any, use whatever of any such genuine label, trade-mark, term or design, without having first obtained, in any and every such case, the consent and authority of the person, association, organization or corporation adopting, filing and registering the same, or causing the same to be filed and registered, as provided in this article.

The court is empowered to make such other orders and direct such other proceedings as the court may deem necessary and proper for the due protection of the rights of plaintiff, effecting the purposes of this article, the prevention of any violation of any of the provisions of the same, and to secure and protect any and all persons, associations, organizations or corporations in all the rights, privileges, property and interests to which they or any of them are or may be entitled in any such label, trade-mark, term or design under any of the provisions of this article or otherwise.

The court shall award to the plaintiff in any such action any and all damages resulting from any such wrongful use of any such label, trade-mark, term or design by any defendant, or for any violation of any of the provisions of this article, and shall require any such defendant to pay to such plaintiff any and all such damages, together with all costs and expenses incurred by any such plaintiff in any such action or proceeding.

The court shall also order and adjudge that the defendant pay to the plaintiff any and all profits obtained, received or derived from any such wrongful use, or any violation of the provisions of this article, or both profits and any such damages, and that any and all such counterfeits or imitations of any such labels, trade-marks, terms or designs in the possession or under the control of the defendant in any such suit shall be delivered up to an officer of the court, or to the plaintiff, to be destroyed, and that any such genuine labels, trade-marks, terms or designs in the possession or under the control of any such defendant shall be delivered up to the plaintiff.

56:3-11. Penalty for violations of article; procedure for recovery. Any person, association, organization or corporation, violating any of the provisions of this article, shall be liable to a penalty of \$200.00, to be recovered in an action in any court of this state having jurisdiction in civil causes, by any person, association, organization or corporation that has adopted, filed and registered, or caused to be adopted, filed and registered, any label, trade-mark, term or design pursuant to the provisions of this article.

If any execution shall be issued upon any judgment obtained against the defendant or defendants in any such action, and the same be returned unsatisfied, the court may award an

execution to take the body of the defendant or defendants.

The court in which any such action may be brought shall make all proper and necessary orders to restrain and prevent any defendant or defendants from continuing the committing of any violation of any of the provisions of this article

56:3-12. Action by unincorporated association or organization. Any action brought by or on behalf of any unincorporated association or organization for any violation of the provisions of this article, may be brought in the recognized name of any such association or organization, or in the proper name of the president or the secretary or the treasurer of any such association or organization, who has been or who may be given authority to bring any action for or on behalf of any such association or organization, and if, for any reason, such authority is not given before the commencement of any such action, the same may be given thereafter at any time before the trial of the same. Any such action may be brought in the recognized name of any branch or local or subassociation, affiliated or connected with any national or international association or organization, or in the name of the president, or the secretary, or the treasurer thereof. The authority to bring any such action may be given by any board of directors, executive board, or executive committee, of any such association or organization, elected, chosen, or appointed by any such association or organization. Any such person bringing any such action in any court of this state shall have the right to receive any and all moneys, property or other valuable thing recovered by or adjudged to the plaintiff in any such action, for the use and benefit of the association or organization entitled to the same. Whenever any such action is brought by or on behalf of any such branch or local or subassociation or organization as herein provided, instead of by or on behalf of any such national or international association or organization, such branch or local or subassociation bringing the same shall be entitled to the same rights, privileges, remedies and advantages, in the prosecution of such action, as any other party or parties authorized by this article to bring such action would have been entitled to if the same had been brought by them, or in their behalf, as herein provided.

56:3-23. Complaint for violation of article. Any penalty for violation of the provisions of this article may be sued for and recovered in an action brought in the name of the state in the municipal court of the municipality where the violation occurred.

56:3-24. Repeal

Note of Reporter. Rules 8 1-1 et seq control See 8 7-1 et seq

56:3-25. Search warrant for unlawfully used

containers; procedure. Whenever any person shall make oath before any magistrate of a municipal court that he has reason to believe and does believe that any bottle, container or receptacle mentioned in section 5 3-15 of this title, the property of any person or corporation who or which has complied with the provisions of sections 56 3-16 and 56 3-17 of this title, are being filled, sold, bought, given, taken, possessed, used, disposed of or trafficked in by any person or corporation in violation of this article, such magistrate shall issue a search warrant to discover and obtain such bottles, containers or receptacles, and to bring before such magistrate the person in whose possession bottles, containers or receptacles may be found. If any such bottles, containers or receptacles are found in the possession of any such person in violation of the provisions of this article, the magistrate issuing the search warrant shall proceed to trial and judgment and, upon judgment, shall also award possession of the bottles, containers or receptacles taken under the search warrant to the owners or proprietors thereof.

Source L 1933, c 366, §11

56:3-30. Repeal Covered by rules

56:3-31. Enforcement of judgments; execution. Whenever judgment is rendered against any defendant, other than a corporation, execution shall issue against such defendant's goods and chattels and his body. If the officer executing any such writ is unable to find within his jurisdiction sufficient goods and chattels of defendant to make the amount of the judgment against him, he shall take the body of defendant and deliver him to the keeper of the common jail of the proper county, there to be detained until discharged by the court in which the judgment was obtained, or by a judge of the superior court, when the court or judge shall be satisfied that further confinement will not result in the payment of the judgment and costs. If judgment is rendered against a corporation, execution shall be issued against the goods and chattels of the corporation as in other actions at law.

Note of Reporter This should be covered by a general act

56:3-41. Penalty; recovery; jurisdiction; procedure. Any person violating any of the provisions of this article shall, for the first offense, be liable to a penalty of not less than \$50 00 nor more than \$100 00, and for each subsequent offense to a penalty of \$200 00, recoverable in an action instituted in any county district court or municipal court having jurisdiction. An action for the recovery of a penalty under this article may be instituted by any person aggrieved or damaged by a violation of this article. The penalty, when recovered in a county district court, shall be paid to the treasurer of the county, and, when recovered in a municipal court shall be paid to the treasurer of the municipality.

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56:3-46. Penalty for violations of article; amount; recovery; procedure. Any person who shall, in violation of this article, either, use, sell, dispose of, buy, traffic in or have in his possession, or in, on or about his premises any such can or cans, or who shall willfully mar, erase or change by remarking or otherwise the name or initials of any such owner, dealer or shipper, so stamped, marked or fastened upon such can or cans, or who shall have any such can or cans on, in or about his premises as in this article provided, shall be liable to a penalty of \$50 00 for each and every such can either so used, sold, disposed of, bought, trafficked in, or found in his possession or in, on or about his premises

The penalty prescribed by this section shall be recovered in an action to be brought in the name of the owner, dealer or shipper in any court of this state having cognizance thereof, with costs of action and such reasonable disbursements as any such owner, dealer or shipper, or his agent, may incur in retaking possession of any such can or cans, to be determined in such action.

56:3-47. Complaint for unlawful use of cans; jurisdiction; search warrant; procedure. If any owner, dealer or shipper, or his agent, has reason to believe, and does believe, that any can or cans of the kind mentioned in section 56 3-42 of this title, stamped or marked as provided in said section 56 3-42, is or are being used, or has or have been unlawfully used as aforesaid, by any person, or that any person has any such can or cans secreted in or upon his premises, or any other place, any such owner, dealer or shipper, or his agent, may go before the magistrate of a municipal court of the municipality wherein such offenses may be or have been committed, and make complaint thereof under oath, which complaint may be wholly upon information and belief. Whereupon the magistrate before whom such complaint shall have been made shall issue a process in the nature of a search warrant, directed to any constable, marshal or other executive officer of any city, town or place, which shall recite the complaint, or the substance thereof, and shall command such constable, marshal or other executive officer to search immediately the premises, place or places mentioned in the complaint, and, if any milk or cream cans be found, to bring the same, together with the body of the person in whose possession they may be found, before such magistrate, who shall summarily inquire into the ownership of such can or cans, and, upon being satisfied that the same

belong to such owner, dealer or shipper, or that his agent is entitled to the possession thereof, he shall deliver such can or cans to such owner, dealer or shipper, or his agent, who shall have the costs of the proceedings from the person so illegally having such can or cans in his or their possession

56:4-11. Proceedings for recovery of penalty; process; judgment; execution. An action for the recovery of any penalty for the violation of this chapter may be instituted in the county district court or county court of the county where the violation occurred

The trial shall be with or without a jury, as the defendant may desire. If judgment be rendered for the plaintiff and defendant refuses or neglects to forthwith pay the amount of the judgment rendered against him and all the costs and charges incident thereto, defendant shall be committed to the county jail for any period not exceeding 100 days. Execution for the collection of any judgment may issue against the goods and chattels and body of the defendant

56:4-13. Injunction. Nothing herein contained shall prevent the superior court from granting an injunction for continued violations of this act

56:6-10. Refusal to obey subpoena; application to superior court; contempt. If a person subpoenaed to attend any hearing under this act refuses to appear, be examined or answer any question or produce any books, records, papers, vouchers, accounts or documents when subpoenaed so to do by the commissioner or by any employee of the state tax department designated by the commissioner, the commissioner or such employee of the state tax department may apply to the superior court, upon proof by affidavit of such refusal, for an order directing such person to show cause why he should not obey the command of such subpoena. Upon the return of such order the court shall examine the person under oath and the person shall be given an opportunity to be heard and if the court shall determine that he refuses without legal excuse to obey the command of such subpoena or to be examined or to answer any question or to produce any books, papers, vouchers, records, accounts or documents which he was by subpoena commanded to answer or produce, the court may order said person to comply forthwith with such subpoena or order, and failure to comply may be adjudged to be a contempt of the court

PROPOSED REVISION

Title 58. WATERS AND WATER SUPPLY

58:1-22. Decision in writing; filing; review. Whenever the commission shall make a decision on any application submitted to it, it shall state the same in writing and cause the same to be filed, together with all plans, maps, surveys and other papers or records relating thereto, in the office of the commission. The decision of the commission and its action on any application may be reviewed by appeal to the appellate division of the superior court.

Source L 1929, c 267, p 635, §8

58:1-25.9. Protest; appeal; notice; service of notice; trial by struck jury; judgment. Any owner or operator dissatisfied with any order of the commission requiring him to pay the whole or any part of the cost of such interconnection may, within 15 days after the making of such order, file a written protest with the commission. Any dissatisfied owner or operator filing such protest may appeal to county court of the county wherein such interconnection is wholly or partially situate, within the time and in the manner provided by the rules of the supreme court. Written notice of such appeal shall be served upon each owner and operator of the public water supply systems so interconnected, as well as upon the commission. The county court shall order a trial by a struck jury to assess the amount of the peculiar benefit, advantage or increase in value which the appellant will receive by reason of such interconnection. If the verdict shall be for an amount less than the amount required to be paid by the order of the commission, the appellant shall have judgment against the commission for the difference and the amount of such judgment shall be paid by the state treasurer out of the interconnection revolving fund on the warrant of the commission. If said verdict shall be for an amount more than the amount required to be paid by the order of the commission, judgment shall be entered in favor of the commission and against the appellant for such excess and any money paid on account of said judgment shall be paid into the state treasury there to be added to and become part of the interconnection revolving fund.

58:1-25.20. Mandatory injunction; preference of proceedings. Observance of the orders of the commission pursuant to this act may be enforced by mandatory injunction.

58:3-3. Restraining diversion. Upon its being brought to his knowledge that it is the intention of any person to carry or transport into any other state for use therein, the waters of any such fresh water lake, pond, brook, creek, river

or stream of this state in violation of section 58 3-1 of this title, the state geologist shall, through the attorney general, apply to the superior court for an injunction to restrain the same. The superior court may entertain jurisdiction to preserve the waters mentioned aforesaid for the use and benefit of the citizens and inhabitants of this state and to prevent their being carried or transported in violation of said section 58 3-1. For that purpose, the court may issue such injunctive order or judgment as may be necessary, and may enforce the same in the same manner as it is empowered to enforce other injunctive orders or judgments.

58:4-6. Summary proceedings to enforce orders or prosecute work. If the owner or person having control of any reservoir or dam shall not forthwith comply with any order of the commission made as provided in section 58 4-5 of this title or shall not prosecute the work, when commenced, with reasonable expedition, the commission may direct the attorney general to proceed in the name of the state to enforce its order by a summary proceeding brought in a court of competent jurisdiction. The court shall proceed in a summary manner and may make such order and judgment in the premises as will effectually secure the persons interested from danger of loss from the breaking of the reservoir or dam complained of. The court may enforce such orders and judgment by injunction, contempt proceedings, sequestration, or such other processes as may be applicable in such cases. Source L 1912, c 243, §5 [1924 Suppl §232-37]

58:4A-3. Review of refusal of permit. Any refusal to grant a permit under this act by the division of water policy and supply shall be subject to review by the superior court.

58:5-17. Condemnation; proceedings upon refusal of money tendered for property taken; payment into superior court; withdrawal. Any district water supply commission instituting proceedings for the acquisition of land or other property under and by virtue of the provisions of chapter 1 of the title, Eminent Domain (§20 1-1 et seq), may upon offer made to and refused by the owner of such property of such sum of money as in the opinion of the commission is the reasonable value of the property, pay the sum of money so offered into the superior court, there to await the determination of the commission appointed to examine and appraise said property and to assess the damages for the taking thereof, but nothing contained in this section shall apply to any property devoted to or

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held for any public use by any board, commission or agency of this state, municipality or county of this state, or by any public utility as the same is defined by section 48 2-13 of the title, Public Utilities

The payment of such sum into the superior court shall operate to stop the running of interest upon any award thereafter made to the amount of such deposit, and upon said payment the condemning party may forthwith enter in and upon the property sought to be acquired in the same manner and with like power as though the proceedings in condemnation had been completed, but in the event of any such entry the proceedings in condemnation may not be discontinued except with the assent of all the parties thereto

If, during the pendency of the proceedings in condemnation, a good and sufficient deed of conveyance for the rights and interests sought to be condemned shall be executed and delivered to the authority seeking to condemn, the owners may forthwith apply to the superior court for the withdrawal of said funds in the manner provided in other cases for the withdrawal of such funds in chapter 1 of the title, Eminent Domain (§20 1-1 et seq)

58:10-2. Summary actions for recovery of penalties; disposition of moneys recovered. Any penalty incurred under any of the provisions of section 58 10-1 of this title may be recovered, with costs, in a summary action in the name of the department or of any local board of health or corporation specified in said section 58 10-1

Any health inspector or any member of any local board of health, who knows or is informed of any violation of any of the provisions of said section 58 10-1 shall, and any other person having such knowledge may, institute an action for the recovery of any penalty incurred, in the county district court of the county wherein the offense was committed or in the municipal court of the municipality within which any local board bringing the action shall have jurisdiction

When the plaintiff in any such proceeding is the department, or any corporation engaged in the business of supplying water for sale for potable purposes, the moneys, when recovered, shall be paid to the department and by it paid into the state treasury, and when the plaintiff in any such proceeding is the local board of health of a municipality, the moneys recovered shall be paid into the treasury of the municipality

58:10-4. Enjoining violations. If any person, corporation, municipality, or any municipal or township authority, shall violate any of the provisions of section 58 10-1 of this title, the department, whether or not the penalty prescribed by said section 58 10-1 shall have been sued for or recovered, may institute an action in the superior court in the name of the state on the relation of the department for an injunction to

prohibit the further violation of said section 58 10-1

The local board of health having jurisdiction over the place where such offense was committed, or the local board of health of any municipality, the potable water supply of which is or may be affected by such offense, or any corporation engaged in the business of supplying water for sale for potable purposes, whose supply of potable water is or may be affected by such offense, whether or not such penalty shall have been sued for or recovered, may institute an action in the superior court in the name of such board or corporation for an injunction to prohibit the further violation of said section 58 10-1

58:10-8. Enjoining violations. Upon violation of any of the provisions of this article, the department may, either before or after the institution of proceedings for the collection of the penalty imposed by this article for such violation, institute an action in the superior court in the name of the state at the relation of the department for an injunction to restrain the violation and for such other or further relief in the premises as said court shall deem proper Neither the institution of such action nor any of the proceedings therein, shall relieve any party to such proceedings from the penalty prescribed by this article for the violation

58:10-11. Summary actions for recovery of penalties; disposition of moneys recovered. Any penalty incurred under the provisions of section 58 10-10 of this title may be recovered, with costs, in a summary action in the name of the department

Any representative of the department having knowledge of any violation of any of the provisions of said section 58 10-10 may institute an action against the offending person or municipality for the recovery of any penalty incurred, in the county district court or any other court having competent jurisdiction in such actions, wherein the plant or system of such person or municipality may be located

All moneys recovered under the provisions of this article shall be paid into the state treasury

58:10-12. Enjoining violations. Upon the violation of any of the provisions of section 58 10-10 of this title, the department may, whether or not the penalty prescribed by said section 58 10-10 shall have been sued for or recovered, institute an action in the superior court in the name of the state on the relation of the department for an injunction to prohibit the further violation of said section 58 10-10

58:10-20. Enjoining violations. Upon the violation of any of the provisions of this article the department may, instead of suing for the recovery of the penalty prescribed by section 58 10-19 of this title, institute an action in the superior court in the name of the state on the

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relation of the department for an injunction to prohibit the further violation of this article

58:10-32. Review of proceedings of commission. Any order, decision, judgment or proceeding of the commission under the provisions of this article may be reviewed by the superior court.

58:10-39. Summary proceedings for recovery of penalties. Any local board of health which has jurisdiction within any county or municipality on the banks of or bordering on the Passaic river or any of its tributaries may institute a summary action for the recovery of penalties against any person violating the provisions of this article in the municipal court of the municipality wherein such violation occurred

58:10-40. Restraining violations. Any local board of health which has jurisdiction within any county or municipality on the banks of or bordering on the Passaic river or any of its tributaries, may institute an action in the superior court in the name of the state on the relation of such board for an injunction to prohibit the maintenance of anything, the maintenance of which is hereinbefore prohibited

58:10-43. Enforcement by state department of health. The state department of health may institute in the name of the state such actions as may be deemed necessary or appropriate to enforce the provisions of section 58 10-42 of this title. The superior court is hereby vested with jurisdiction to enforce the provisions of said section in a summary manner upon application of the department

58:11-6. Enjoining violations. The department may institute an action in the superior court, in the name of the state on the relation of the department for an injunction to prohibit any violation of any of the provisions of this article, other than the violations enumerated in section 58 11-4 of this title, for which a penalty is provided

Source L 1909, c 253, p 458, §6 [C S p 5814, §70],
suppl to L 1899, c 41, p 73

58:11-9.9. Actions for penalties. Any penalty incurred under any of the provisions of section 58 11-9 8 of this article shall be recovered in the name of the state department, a local board of health, or the owner of the supply specified in said section 8. Such action may be maintained in the county district court of the county or in the municipal court of the municipality in which the violation occurred

58:11-9.10. Enjoining violations. If any person, corporation, or municipality, or any municipal or township authority shall violate any of the provisions of sections 58 11-9 2 and 58 11-9 5 of this title, the state department, whether or not the penalty prescribed by section 58 11-9 8 of this title shall have been sued for or recovered,

may institute an action in the superior court in the name of the state on the relation of the department for an injunction to prohibit the further violation of said sections 58 11-9 2 and 58 11-9 5

The local board of health having jurisdiction over the place where such offense was committed, or the owner of the potable water supply which is or may be affected by such offense, whether or not such penalty shall have been sued for or recovered, may institute an action in the superior court in the name of such board or owner for an injunction to prohibit further violation of the said sections

58:11-11. Enjoining violations. If any such construction work shall be begun before the detailed plans and specifications therefor have been submitted to and approved by the department as provided by section 58 11-10 of this title, the department may institute an action in the superior court in the name of the state on the relation of the department for an injunction to prohibit the violation of said section 58 11-10

58:11-18. Enjoining violations. Whenever any municipality, corporation or individual shall violate any of the provisions of this article, the department may, either before or after the institution of proceedings for the collection of the penalty imposed by this article for such violation, institute an action in the superior court in the name of the state at the relation of the department for an injunction to restrain such violation and for such other or further relief as the court shall deem proper. Neither the institution of such action, nor any of the proceedings therein, shall relieve any party to such proceedings from the penalty prescribed by this article for such violation

58:11-18.16. Recovery of penalties. Any and all penalties prescribed by any provisions of this act shall be sued for and recovered in an action instituted by and in the name of the department as plaintiff

58:11-18.17. Restraining violations. Whenever any municipality, corporation, person, superintendent or operator shall violate any of the provisions of this act, the department may, either before or after the institution of proceedings for the collection of the penalty imposed by this act for such violation, institute an action in the superior court in the name of the state at the relation of the department for an injunction to restrain such violation and for such other or further relief as the court shall deem proper. Neither the institution of such action nor any of the proceedings therein shall relieve any party to such proceedings from the penalty prescribed by this act for such violation

58:12-2. Powers and duties of department of health relative to sewage disposal and pollution of waters; orders for improvements; appeal. The

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state department of health, hereinafter in this chapter designated as the "department", shall investigate the various methods of sewage disposal in order that it may be able to make proper recommendations in regard thereto, shall require alterations, additions or improvements to sewage treatment works, shall investigate all complaints of pollution of the waters of this state which shall be brought to its notice, and may inspect any of the waters of this state

If the department finds that any of said waters are being polluted in such manner as to cause or threaten injury to any of the inhabitants of this state, either in their health, comfort or property, or that any sewage treatment works are inadequate in capacity or unit design to properly care for, treat and dispose of sewage before an effluent from such works is discharged into any of said waters, it shall notify in writing any person, corporation or municipality found to be polluting said waters or owning, operating or controlling, separately or jointly, any such inadequate sewage treatment works, that prior to a time to be fixed by the department, which time shall not be later than 5 years from the date of the notice, the person, corporation or municipality polluting said waters must cease such polluting and make such disposition of its sewage and other polluting matter as shall be approved by the department, and such person, corporation or municipality owning, operating or controlling inadequate sewage treatment works as aforesaid must alter, add to or improve such works in order that the sewage being received therein shall be cared for, treated and disposed of, and the effluent discharged into said waters in a manner approved by the department

Any person, corporation or municipality aggrieved by the finding of the department may appeal therefrom to the appellate division of the superior court

Source L 1899, c 210, §5, as am L 1900, c 72, §5, L 1930, c 186, §1, L 1907, c 135, §1, suppl to L 1899, c 210

58:12-4. Restraining violations. The department may apply to the superior court for an injunctive order or judgment to prevent the violation of the provisions of this chapter

Source L 1900, c 72, p 116, §9 [C S p 5819, §90], as am L 1930, c 186, p 670, §5, L 1907, c 135, p 361, §2 [C S p 5830, §124], suppl to L 1899, c 210, p 536

58:12-34. Application by taxpayers for review of apportionment. If only a part of a municipality is included in a sewerage district and the governing body of such municipality shall not adopt a resolution expressing its dissatisfaction as provided by section 58 12-32 of this title, 1 or more residents and taxpayers, or residents and nonresident taxpayers, of the sewerage district may join in an application to the superior court for the appointment of commissioners to review said division and apportionment as provided by sections 58 12-32 and 58.12-33 of this title.

Thereupon, the court may, in its discretion, appoint such commissioners, and if the appointment be made, proceedings by and before them shall be similar to those provided by said sections 58 12-32 and 58 12-33, and the statement or certificate of the commissioners made upon any such application shall be final and conclusive and binding upon all parties.

Source L 1899, c 210, p 545, §23, as am L 1900, c 72, p 126, §31 [C S p 5825, §112]

58:14-7. Discharge of sewage or other polluting matter into certain waters prohibited; enforcement. No sewage or other polluting matter shall be discharged, directly or indirectly, into the waters of the Passaic river at any point between the Great falls in the city of Paterson and the mouth of said river at Newark bay, or into the waters of any of the tributaries of said river which empty into it between said points, and the commissioners may enforce the provisions of this chapter over and throughout all municipalities which may, or the inhabitants of which may, directly or indirectly, discharge sewage or other polluting matter into said waters. The commissioners may institute in their corporate name such actions as may be deemed necessary or appropriate to enforce the provisions of this section, and the superior court is hereby vested with special jurisdiction to enforce said provisions in a summary manner upon application of the commissioners.

Source L 1907, c 10, §1, as am L 1911, c 170, §1, L 1914, c 87, §1, L 1916, c 208, §1, L 1917, c 169, §1, L 1919, c 201, §1, L 1920, c 138, §1, L 1921, c 50, §1, L 1922, c 37, §1

58:16A-12. Easement rights; termination. If the commissioner of conservation shall determine subsequent to the taking of a temporary easement right in property that the purposes for which such easement right was acquired have been accomplished and that the use and occupancy of said property for flood control purposes are no longer necessary, and that, therefore, the term of such easement should be further limited, or if the taking of such easement was for an indefinite period, that such period should be fixed and determined, or that the period of such easement has by its terms expired, he shall make his certificate that the use and occupancy of such property for flood control purposes are no longer necessary, that the property in which such easement right was acquired is surrendered back to the affected owner of said property and that such easement right is thereupon terminated, released and extinguished. The commissioner of conservation shall cause a copy of such certificate to be filed in the office of the clerk of the superior court. Upon the filing of such certificate all rights acquired by the state in such property shall cease and determine. The commissioner of conservation shall cause a copy of such certificate together with notice of the filing thereof in the office of the clerk of the superior court to be mailed to the owner of the property affected, as certified by the attorney

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general, if the place of residence of such owner is known or can be ascertained by a reasonable effort. A further copy of such certificate and notice of filing shall be filed in the office of the recording officer of each county wherein the

property affected is situated. On the filing of such certificate and notice with such officer it shall be the duty of such officer to record same in the books used for recording deeds in the office of such officer.

PROPOSED REVISION

APPENDIX A

App. A:4-1. Repeal This act expired in 1939 (see App A 4-7)

App. A:4-2. Repeal This act expired in 1939 (see App A 4-7).

App. A:4-3. Repeal This act expired in 1939 (see App A 4-7).

App. A:4-4. Repeal This act expired in 1939 (see App A:4-7).

App. A:8-61. Repeal The 1939 act expired June 30, 1941 (see App A 8-98).

App. A:8-62. Repeal The 1939 act expired June 30, 1941 (see App A 8-98)

App. A:8-77. Repeal The 1939 act expired June 30, 1941 (see App A 8-98)

App. A:8-89. Repeal The 1939 act expired June 30, 1941 (see App A 8-98)

App. A:8-90. Repeal The 1939 act expired June 30, 1941 (see App A 8-98)

App. A:8-92. Repeal The 1939 act expired June 30, 1941 (see App. A 8-98)

PROPOSED ADDITIONAL LEGISLATION

Amendments to such sections of the statutes having to do with practice and procedure, as are not included in or compiled with Titles 2 and 3, will be submitted as separate bills

It is anticipated that additional legislation will also be recommended by the committee in order to bring about improvements in the law which have come to the committee's attention in the course of its work. Several items of this sort are set forth below

Title 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE.

Repeal R S 2 25-1, 2 25-2 and 2 25-3, reading as follows

2:25-1. Thirty years' possession of real estate, except woodlands or uncultivated tracts, and 60 years' possession of woodlands or uncultivated tracts however commenced or continued. Thirty years' actual possession of any real estate excepting woodlands or uncultivated tracts, and 60 years' actual possession of woodlands or uncultivated tracts, uninterruptedly continued by occupancy, descent, conveyance or otherwise, shall, in whatever way or manner such possession might have commenced or have been continued, vest a full and complete right and title in every actual possessor or occupier of such real estate, woodlands or uncultivated tracts, and shall be a good and sufficient bar to all claims that may be made or actions commenced by any person whatsoever for the recovery of any such real estate, woodlands or uncultivated tracts

2:25-2. Thirty years' actual possession of any real estate under claim or color of title. Thirty years' actual possession of any real estate, uninterruptedly continued by occupancy, descent, conveyance or otherwise, wherever such possession commenced or is founded upon a proprietary right duly laid thereon, and recorded in the office of the surveyor general of the division in which the location was made, or in the office of the secretary of state, pursuant to law, or wherever such possession was obtained by a fair bona fide purchase of such real estate from any person in possession thereof and supposed to have a legal right and title thereto, or from the agent of such person, shall be a good and sufficient bar to all prior locations, rights, titles, conveyances, or claims whatever, not followed by actual possession as aforesaid, and shall vest an absolute right and title in the actual possessor and occupier of all such real estate

2:25-3. Disabilities affecting right to enforce right or title to real estate. If any person having a right or title to real estate shall, at the time such right or title first accrued or descended, be either not of sound mind or under the age of 21 years, or without the United States, he, and his heirs, may, notwithstanding the fact that

the periods of time mentioned in sections 2 25-1 and 2 25-2 of this title has expired, bring his or their action to enforce his or their right or title, if such action shall be commenced within 5 years after his disability is removed or he comes within the United States, but not thereafter

Note of Reporter It is proposed by a separate act to repeal R S 2 25-1, 2 25-2 and 2 25-3 in order to simplify the law and relieve it of the confusion which arises from having on the books a 30-60 year statute of limitations as to actions for real estate, in addition to R S 2 24-12 and 2 24-13, the 20 year statutes. On September 22, 1937, just before the adoption of the Revised Statutes of 1937, it finally was settled by the courts that the possession which brought these sections of the Revised Statutes into operation, like that which brings the 20 year statutes into operation must be adverse. *Content v Dalton*, 122 N J Eq 425, 194 A 286, 112 A L R 1031 (E & A 1937). Moreover the phrase in R S 3 25-2 and 3 25-3 that possession for 30-60 years shall "vest a full and complete" or "an absolute right and title" in the possessor gives him only a negligible practical advantage over a title by adverse possession acquired under R S 3 24-12 and 3 24-13. Furthermore under R S 2 24-12 and 2 24-13 it is held, contrary to the language thereof but in accord with R S 3 25-3, that in case the owner of the property is under 21 or insane, the limitation of 20 years established by that act is to be computed from the time the disability of infancy or insanity is first removed, supervenient disabilities do not count. It follows that R S 2 25-1 to 2 25-3 are practically superfluous, except that they allow a period of 5 years after certain disabilities are removed (which may extend the 30 year period to 35 years) in which to commence an action, whereas R S 2 24-12 and 2 24-13 allow a period of 20 years after the disability is removed (which may extend the 20 year period to 40 years) within which to commence the action. As Justice Elmer held in *Pinckney v Burrage*, 31 N J L 21 (Sup Ct 1864), these statutes, now R S 3 25-1 to 3 25-3, have "ceased to be of much practical importance". They have been relied upon in cases construing land contracts where there has been a covenant that the title offered for sale is not "title by adverse possession". *Satchwell v Warner*, 127 N J Eq 544, 14 A 2d 527 (Ct Ch 1940), affirmed on opinion 129 N J Eq 384, 19 A 2d 830 (E & A 1941). But, such decisions as the last one do not indicate that it is in the public interest to continue those statutes on the books

Repeal R S 2 25-8 and reenact it as a supplement to chapter 4 of Title 46 (Property). The statute reads

2:25-8. Boundary certificates; conclusiveness and effect. A certificate, executed by the owners of adjoining lands, certifying that any line, corners and boundaries are allowed and acknowledged by them to be the true boundary between their lands, shall be as fully conclusive and binding

Title 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE

as to the parties thereto, their heirs, successors and assigns as though such boundary had been fixed by them by deed or otherwise. Any such certificate, when duly acknowledged or proved, may be recorded in the office of the county clerk or register of deeds and mortgages, as the case may be, of the county in which such lands lie, and, when so recorded, the record thereof shall be receivable in evidence and shall be notice in the same manner and to the same effect as though their respective deeds had been so acknowledged or proved and recorded.

Source L 1934, c 209, p 492, §1

Note of Reporter This act in its original form appeared as section 4 of an act of June 5, 1787, which bore this preamble:

"Whereas the laws, now in force, for the limitation of suits respecting real estates, are found insufficient to answer the good purpose of quieting claims and securing titles—therefore"

Notwithstanding the historical associations of this statute, analytically it has nothing to do with adverse possession or the statute of limitations, it in reality provides a method of preparing a short form deed, as every conveyancer knows who has attempted to draft a multi-party deed setting up a boundary line. The statute should be moved from the chapter on adverse possession to the chapter on short form deeds.

R S 2 25-9 should be amended to read as indicated below.

2A:25-9. Immateriality of descent cast. If the disseizor of an interest in real estate, having no right or title thereto, shall hereafter die seized of such interest, the descent of the right or title acquired by the disseizin to the heir of the disseizor shall not take away the right of entry of the person who, at the time of such descent, had lawful title.

Source Rev 1877, p 1407, §3 [C S p 1524, §3]

Note of Reporter This statute, creating title by adverse possession in a certain situation after a period of 5 years, is an anomalous modification of 3 and 4 Wm 4, c 27, sec 29 which provided that no descent cast after 31st December 1833 shall toll any right of entry. The proposed amendment to R S 2 25-9 will bring the New Jersey law into conformity with that of other states and of England. The statute can then be compiled with chapter 24 of Title 2A, as section 2A 24-31.

Enact the following as a supplement to Title 22 of the Revised Statutes:

Waiver of payment of fees. The payment of any fees may be waived or dispensed with by any court when a plaintiff, defendant, appellant, respondent or other party by reason of poverty seeks relief therefrom.

Note of Reporter. This statute has been derived from the first clause of R S 2 26-2 and L 1948, c 328, sec 5 (C 2 25B-5) which apply to the cost of issuance of process to a plaintiff and the payment of filing fees by an appellant. It is not perceived why this statute should not be broadened so as to cover poor defendants and respondents. In fact this is the practice in matrimonial actions. See Rules 3 87-9 and 3 87-10.

2A:8-100. The existing municipal courts heretofore established pursuant to the provisions of an act entitled "An act relating to local county

district courts and municipal courts and the jurisdiction, functions, powers and duties of such courts and of the judges and the magistrates thereof, establishing county district courts in certain counties, providing for the establishment of municipal courts in certain municipalities and for municipal courts for 2 or more municipalities in certain cases, providing for the transfer of certain existing courts to such municipal courts, providing for the abolition of the office and terms of justices of the peace and providing for the abolition of the small cause courts", approved July 27, 1948 (P L 1948, c 264), as amended and supplemented, are hereby continued and shall be subject to the provisions of this chapter.

Source New

2A:9-11. Clerk's bond. Each clerk of a municipal court shall, before entering upon the duties of his office, enter into bond to the municipality or municipalities wherein the court is located, in such amount and with such surety as the governing body or governing bodies may fix, conditioned upon the faithful performance of his duties.

Source New

2A:26-16. Marginal notation in record of notice of judgment for defendant; appeal; further lis pendens. Whenever a final judgment is made in favor of the defendant or defendants in any action, notice of the pendency of which has been filed in the office of any county clerk or register of deeds and mortgages, the county clerk or register of deeds and mortgages in whose office the notice has been filed shall, when a copy of such judgment, certified under the seal of the court in which the judgment shall have been obtained, is filed in his office, enter in the margin of the record of the notice a statement of the substance of the judgment. Thereafter the real estate described in the notice shall be discharged of all equities or claims set up in the complaint in the action, unless an appeal or other proceedings are taken and a similar notice of lis pendens is filed in said office, stating also the object of the appeal or other proceedings. Such notice shall, during the pendency of such appeal or other proceedings, have the effect of the notice first filed.

Source R S 2 26-35

Note of Reporter This statute is in substance the same as R S 2 26-35, except for the addition, at the end, of the words commencing with "unless" appearing in the next to the last sentence. The original act first appears in L 1873, p 68. It provided, as does R S 2 26-35, that on judgment for the defendant and the notation thereof in the margin of the record, the real estate is discharged of all equities set up in the bill of complaint "although the action is thereafter revived"—that is even though a bill of revivor is filed after the final judgment. Bills of revivor are of course obsolete now.

The present statute leaves it somewhat in doubt as to (a) whether a lis pendens is effective before a motion for relief from judgment is made or before an appeal is taken, and further (b) whether it is effective pending proceedings for such relief or pending the appeal. In *Boice v Conover*, 69 N J Eq. 580 (Ch 1905), affirmed 71 N J Eq 269 (E & A

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1906) it was said that "a judgment or decree in a lower court against the right claimed does not necessarily and at once terminate the lis pendens, and the notice continues during a reasonable time for an appeal to be taken" However no lis pendens was filed in that case, and the statute was not cited. It would seem to be in keeping with the spirit of the statute as well as the spirit of the registry acts that a second lis pendens should be required after the final judgment in order to give notice of the pendency of the appeal or other proceedings. This avoids the considerable conflict in the authorities as to the effect of a lis pendens pending an appeal or a motion for a new trial or for a rehearing, as well, as to its effect after final judgment and prior to such proceedings. See 54 C J S 601 et seq., 34 Am Jur 387, 10 A L R 415, 150 A L R 676.

If on a motion for a new trial or on an appeal, a new trial is granted, the second lis pendens can be made effective pending the new trial and until final judgment thereon, but the notice of lis pendens should make reference to the new trial as one of the proceedings to be taken, if the court so directs.

2A:26-19. Discharge of lis pendens when judgment is paid, satisfied or action settled or abandoned. When a judgment made in an action, of the pendency of which notice has been filed as herein provided, is paid, satisfied or performed, or the action has been settled by the parties thereto or has been abandoned by plaintiff therein, a statement of such payment, satisfaction, performance, settlement or abandonment shall be entered by the county clerk or register of deeds and mortgages in whose office the notice has been filed, upon the receipt and filing by him of a warrant for that purpose, executed by the party who filed the notice, or his attorney, as warrants to satisfy judgments are required to be executed.

If the judgment has been paid, satisfied or performed or the action has been settled or abandoned as aforesaid, but the party who filed the notice of lis pendens fails to file the warrant stated, the court having jurisdiction of the action may, upon being satisfied of the fact of such payment, satisfaction, performance, settlement or abandonment and upon such notice as it may by its order direct, order the real estate affected and described in the notice of lis pendens to be discharged of all claims or equities set up in the complaint in the action.

The county clerk or register of deeds and mortgages shall, upon the filing by him of the warrant mentioned in the first paragraph of this section or upon the filing by him of the original or a certified copy of the order mentioned in the second paragraph of this section, note in the margin of the record of the lis pendens notice the discharge thereof by the warrant or order.

Thereupon the real estate affected by the action and described in the notice shall be discharged of all claims or equities set up in the complaint in the action.

Note of Reporter Harvey v Randall, 99 N J Eq 859 (E & A 1926) held that no court could discharge a lis pendens of record except as provided by statute. The above statute presently allows for a discharge by order of the court only where the party who filed the notice of lis pendens is dead or cannot be found and his attorney is dead or has removed from the state. There should be just as much discretion in the court to discharge a lis pendens as there is

to enter a satisfaction of judgment under R S 2 27-313—that is, the court should have authority to discharge a lis pendens whenever a judgment is satisfied and also whenever the action has been settled or abandoned.

2A:32-266. A landlord or lessor, his legal representatives, agents or assigns, shall file a verified complaint alleging facts which, according to section 2 32-265 of this title, authorize such proceedings against a tenant, and describing therein the premises claimed, and if proceedings are begun under paragraph "b" of said section 2 32-265, the complaint shall state the amount of rent claimed to be in default. The complaint, which may be amended before or at the trial, shall be filed with the clerk of the county district court having jurisdiction of such matters pursuant to section 2 32-265 of this title.

2:32-267. On filing the verified complaint mentioned in section 2 32-266 of this title, the clerk shall issue a summons, describing the premises, in respect of which such proceeding is had, and requiring such tenant or any person in or claiming possession thereof, forthwith to remove from or surrender the same, or to show cause before the court, at a certain place and time to be therein specified, not less than 5 nor more than 15 days from the date of the summons, why possession of such premises should not be delivered to the claimant. The aforesaid complaint shall be annexed to the summons and returned therewith, and a copy of the complaint shall be served with the summons. The summons shall be served in the same manner as other writs of summons issued out of such court. Either party may demand and have a trial by jury of 12 persons.

2A:32-268. Where, for any reason, service of any of the notices required by section 2 32-265 of this title, or a summons issued under section 2 32-267 of this title and the complaint mentioned in section 2 32-267 of this title, cannot be served as provided in said sections 2 32-265 and 2 32-267, such notices or summons and complaints may be served upon any person actually occupying the premises, either personally or by leaving same with a member of his family above the age of 14 years, or when admission to the dwelling or premises occupied by the tenant, or persons holding under him, is denied to the officer attempting to serve such summons, or to the person attempting to serve such notice, or when the tenant or occupant and all members of his family above the age of 14 years are absent from said premises, or if there is no person actually occupying the premises, the officer or other person may post or affix a copy of the same upon the door or other conspicuous part of such premises, which posting shall be deemed to be a lawful service.

2A:32-269. If, in proceedings instituted under paragraph "b" of section 2 32-265 of this title,

the tenant or person in possession of the demised premises shall at any time on or before the return day of the summons, pay to the clerk of the court out of which the summons has issued, the rent claimed to be in default by the verified complaint filed with the clerk, together with the accrued costs of the proceedings, all proceedings shall be stopped and the receipt of the clerk shall be in evidence of such payment. The clerk shall forthwith pay all moneys so received to the landlord or to the person filing complaint for him.

2A:32-271. If no sufficient cause is shown to the contrary when the cause comes on for trial and it shall appear to the judge that the summons has been duly served and, in cases arising under paragraph "b" of section 2 32-265 of this title, that the rent claimed and costs accrued have not been paid, the court shall issue its warrant to any officer of the court, commanding him to remove all persons from the premises, and to put the claimant into full possession thereof, and to levy and make the costs out of the goods and chattels of the person in possession. The claimant shall, if required by the defendant, prove to the satisfaction of the judge, or of the jury if there be a trial by jury, the facts which, according to said section 2 32-265 authorize the proceedings against the tenant.

When there is no appearance by or on behalf of any tenant named therein, or if any defendant shall appear, but make no defense, the court may, if the summons has been duly issued and served, hear and determine the cause upon the pleadings filed, without the production of any witnesses or other proofs.

2A:32-313. Attachment proceedings in a county district court; practice and procedure. A writ of attachment may issue out of a county district court upon the application of any plaintiff whose claim does not exceed \$1,000 00, against the personal property, located within the county, of any person, corporation or organization against whom or which a summons might issue.

The practice and procedure in such actions shall conform, as nearly as may be, to the provisions of Chapter 42 of this title.

2A:32-314. Officer of county district court to execute writ, etc. In attachment proceedings in a county district court the writ shall be directed to an officer of such court, who shall have all the rights and duties given and imposed on the sheriff under the provisions of Chapter 42 of this title.

Proposed General Assignment Act.

2A:34-1. Definition and construction of terms.

a "General Assignment" A voluntary transfer or conveyance by a debtor in writing whereby the debtor transfers or conveys to an assignee, in trust for the benefit of his creditors, all of his property

b "Debtor" The term "debtor" shall include an individual, corporation, unincorporated company, an association and partnership, limited or otherwise.

c "Property" The term "property" shall mean anything which is the subject of ownership.

d "Court" The term "court" shall mean the superior court of the state of New Jersey, in which the proceedings are pending or in which the trust is to be administered.

e "Creditor" Shall include anyone who owns a demand or claim provable under this act.

f "Debt" Shall include any debt, demand or claim provable under this act.

g "Date of assignment", "commencement of proceeding" or "assignment" or "execution of assignment" or "date of execution" with reference to time shall mean the date when the assignment was executed by the debtor.

h "Assignor" Shall mean any debtor who has executed a general assignment under this act.

2A:34-2. Jurisdiction over general assignments as set forth in this title is herewith vested in the superior court of the state of New Jersey.

2A:34-3. Except where otherwise specified, the practice relating to assignments for the benefit of creditors shall conform as nearly as practicable to the procedure relating to insolvent corporations as set forth in R S 14 14-1 et seq.

2A:34-4. The assignee may send for persons and papers and examine, on oath or affirmation, which oath or affirmation he may administer, any persons, including the creditors, claimants and assignor, respecting the affairs, transactions and assets of the assignor, his debts, credits, obligations, contracts, and liabilities and claims asserted against the assignor.

If any person shall refuse to be sworn or affirmed, or to answer the questions put to him, or refuse to declare the whole truth touching the subject matter of the examination, any judge of the court may, on report by the assignee, commit such person to prison, to remain until he shall submit himself to be examined, and pay all the costs of the proceedings against him.

2A:34-5. Preferences. A person shall be deemed to have given a preference if, being insolvent, he has, within 4 months before the execution of the assignment, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment and transfer will be to enable any 1 of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists of a transfer, such period of 4 months shall not expire until 4 months after the date of recording or registering of the

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transfer, if by law such recording or registering is required or permitted

2A:34-6. All levies, judgments, attachments or other liens, obtained through legal proceedings against a person who is insolvent, at any time within 4 months prior to the execution of an assignment by him, shall be deemed null and void, and the property affected by the levy, judgment, attachment or other lien shall be deemed wholly discharged and released from the same, and shall pass to the assignee as a part of the estate of the assignor, unless the court shall, on due notice, order that the right under such levy, judgment, attachment or other lien shall be preserved for the benefit of the estate, and thereupon the same may pass to and shall be preserved by the assignee for the benefit of the estate as aforesaid; provided that nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment or other lien of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

2A:34-7. This act shall be known as the general assignment act

Chapter 60. Liens—Bonds of and Money Paid To Contractors on Public Works.

Preferred alternative revision consolidating motor vehicle and aircraft lien provisions

Note of Reporter This preferred revision would necessitate a substantive change in that the aircraft lien would lose its priority over conditional vendors and prior chattel mortgages properly recorded, in the interests of uniformity. The present statutes for motor vehicle and aircraft liens are practically identical except on this priority point. Other states do not make the distinction between motor vehicles and aircraft

All the statutes listed below are to be repealed	Proposed new citation
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Article 1 Aircraft	
R S 2 60-1	2A 60-1
2 60-2	2A 60-2
2 60-3	2A 60-3
2 60-4	2A 60-4
2 60-5	2A 60-5
2 60-6	2A 60-6
2 60-7	2A 60-7
2 60-8	2A 60-8
2 60-9	2A 60-9
2 60-10	2A 60-10
2 60-11	2A 60-11
2 60-12	2A 60-12

Article 2 Common Carriers	
R S 2 60-13	2A 60-13
2 60-14	2A 60-14
2 60-15	2A 60-15
2 60-16	2A 60-16
2 60-17	2A 60-17
2 60-18	2A 60-18
2 60-19	2A 60-19

All the statutes listed below are to be repealed	Proposed new citation
--------------------------------------------------------	--------------------------

Article 3. Garage Keepers and Automobile Repairmen	
R S 2 60-20	2A 60-1
2 60-21	2A 60-2
2 60-22	2A 60-3
2 60-23	2A 60-4
2 60-24	2A 60-5
2 60-25	2A 60-6
2 60-26	2A 60-7
2 60-27	2A 60-8
2 60-28	2A 60-9
2 60-29	2A 60-10
2 60-30	2A 60-11
2 60-31	2A 60-12

Note of Reporter Article 1 combined with article 3 under new heading "Lien of Bailee of Motor Vehicles and Aircraft"

Suggested consolidation of motor vehicle and aircraft lien statutes.

Article 1 Lien of Bailee of Motor Vehicles and Aircraft.	
2A 60-1	Definitions
2A 60-2	Right of lien, detention, priorities
2A 60-3	Removal of vehicle or aircraft from keeper's control, seizure, cost of seizure
2A 60-4	Statement of amount claimed, offer by the owner of reasonable amount and demand for possession, deposit of amount claimed with court, regaining possession, costs
2A 60-5	Replevin, motor vehicle or aircraft delivered to owner
2A 60-6	Bond in lieu of cash deposit
2A 60-7	Complaint filed by garage keeper or keeper of hangar, trial, judgment
2A 60-8	Failure to bring action, damages, judgment, return of balance of deposit
2A 60-9	Entry of appearance by owner
2A 60-10	Sale of motor vehicle or aircraft if proceedings not taken by owner
2A 60-11	Notice of sale, advertisement
2A 60-12	Disposition of proceeds of sale

Article 2 Common Carriers	
2 60-13	Sale of perishable goods, application to court, procedure
2 60-14	Sale of unclaimed property, when authorized
2 60-15	Notice of sale
2 60-16	Sale of perishable property, notice
2 60-17	Proceeds of sale, disposition
2 60-18	Report of person making sale
2 60-19	Refund to owner of proceeds of sale, petition

Article 1 LIEN OF BAILEE OF MOTOR VEHICLES AND AIRCRAFT

2A:60-1. Definitions. As used in this article: "Aircraft" means any contrivance invented, used or designed for navigation or flight in the air except a parachute or other contrivance designed for such navigation but used primarily as safety equipment

"Aircraft mechanic" means any person licensed to repair or maintain aircraft according to the provisions of the regulations of the United States department of commerce and the laws of the state of New Jersey

"Airport operator" means any person operating an airport according to regulations of the United States department of commerce and of the laws of the state of New Jersey

"Hangar operator" means any person operating a hangar according to regulations of the United

States department of commerce and the laws of the state of New Jersey

"Garage" means a place or structure used in the business of storing, maintaining, keeping or repairing motor vehicles

"Garage keeper" means a person or corporation engaged in the business of keeping a garage as above defined

Source L 1934, c 121, p 324, §1, L 1915, c 312, p 556, §1 [1924 Suppl §135-46], as am L 1925, c 33, p 96, §1, L 1915, c 312, p 557, §2, as am L 1922, c 231, p 401, §1 [1924 Suppl §135-47], L 1926, c 250, p 425, §1, L 1928, c 67, p 142, §1

2A:60-2. Right of lien; detention; priorities. Any person keeping a garage, hangar or place for the storage, maintenance, keeping or repair of motor vehicles or aircraft or furnishes gasoline, accessories or other supplies therefor at the request or with the consent of the owner or his representative (whether such owner be a conditional vendee or a mortgagor remaining in possession or otherwise) shall have a lien upon the motor vehicle or aircraft or any part thereof for the sum due for such storing, maintaining, keeping or repairing of such motor vehicle or aircraft or for furnishing gasoline, accessories or other supplies therefor, and may, without process of law, detain the same at any time it is lawfully in his possession until the same is paid

The lien shall be superior to all other liens, except liens of state, county and city for taxes, and the operator of such aircraft shall be deemed the agent of any owner, mortgagee, conditional vendor or other lienor therefor for the creation of such superior lien, provided, however, that the lien shall not be superior to, nor affect a lien, title or interest of a person held by virtue of a prior conditional sale or a prior chattel mortgage properly recorded

Source. L 1934, c 121, p 325, §2, L 1915, c 312, p 556, §1 [1924 Suppl §135-46], as am L 1925, c 33, p 96, §1

Note of Reporter It is suggested that there is no valid reason why the aircraft lien should be prior to the lien of a prior conditional sale or a prior chattel mortgage properly recorded when this is not true in the case of motor vehicles. Other states, including New York, treat aircraft and motor vehicle liens as identical

2A:60-3. Removal of aircraft or vehicle from keeper's control; seizure; cost of seizure. A person acquiring a lien by virtue of section 2 60-2 of this title shall not lose the same by reason of allowing the aircraft, motor vehicle or part thereof, to be removed from his control, and if so removed, he may, after demand of payment of claim either personally or by registered mail if the owner's address is known, and without further process of law, seize without force and in a peaceful manner the aircraft or motor vehicle or part thereof, wherever found in this state

A charge of \$10 as costs for such seizure shall be paid by the owner of the aircraft or motor vehicle or parts thereof.

Source L 1934, c 121, p 325, §3, L 1915, c 312, p 557, §2, as am L 1922, c 231, p 401, §1 [1924 suppl §135-47], L 1926, c 250, p 425, §1, L 1928, c 67, p 142, §1

2A:60-4. Statement of amount claimed; offer by owner of reasonable amount and demand for possession; deposit of amount claimed with court; regaining possession; costs. The owner or person entitled to the immediate possession of the motor vehicle or aircraft, or part thereof, so detained, may, on learning of the detention of the same, immediately demand from the person detaining such vehicle or aircraft, or the person in charge of the place where it is detained, a statement of the true amount claimed to be due for the storing, maintaining, keeping or repairing of such motor vehicle or aircraft, or for furnishing gasoline, accessories or other supplies therefor. If, upon receiving such statement, he considers the amount thereof excessive, he may offer what he considers to be reasonably due and demand possession of the motor vehicle, aircraft, or part thereof so detained. If possession is refused, he may obtain possession thereof by depositing the amount claimed in the statement with the clerk of any court of competent jurisdiction in the county where the motor vehicle or aircraft or part thereof may be situated, together with \$20 to cover the costs of court in actions commenced in the county district court and \$70 in any other court

Source L 1934, c 121, p 325, §3, L 1915, c 312, p 557, §2, as am L 1922, c 231, p 401, §1 [1924 suppl §135-47], L 1926, c 250, p 425, §1, L 1928, c 67, p 142, §1

2A:60-5. Replevin; motor vehicle or aircraft delivered to owner. When the amount claimed to be due and the costs are deposited with the clerk of the court as provided in section 2 60-4 of this title, a writ of replevin shall immediately issue out of and under the seal of the court, commanding the sheriff, constable or sergeant at arms to take possession of such motor vehicle or aircraft or part thereof and deliver it to the owner or his legal representative claiming the same

Source L 1934, c 121, p 325, §3, L 1915, c 312, p 557, §2, as am L 1922, c 231, p 401, §1 [1924 suppl §135-47], L 1926, c 250, p 425, §1, L 1928, c 67, p 142, §1

2A:60-6. Bond in lieu of cash deposit. In lieu of depositing the amount claimed in cash as provided by section 2 60-4 of this title, a bond in double the amount claimed and double the amount required to be deposited as costs, may be filed with the clerk of the court. It shall have sufficient surety, and be approved in the manner in which similar bonds are now approved in the court from which the writ of replevin is to issue

The bond shall be written in favor of the sheriff, constable or other officer of the county to whom the writ is directed

Source L 1934, c 121, p 325, §3, L 1915, c 312, p 557, §2, as am L 1922, c 231, p 401, §1 [1924 suppl §135-47], L 1926, c 250, p 425, §1, L 1928, c 67, p 142, §1

2A:60-7. Complaint filed by garage or hangar keeper; trial; judgment. The person claiming a lien under this article shall, not later than 30

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days after the issuance of the writ of replevin, file his state of demand or complaint with the clerk of the court out of which the writ issued, showing the amount claimed by him. The court shall thereupon, at the request of either party, fix the time for the trial of the claim and give judgment according to the facts. The judgment, if any, is to be satisfied out of the deposit made, or action may be brought on the bond filed. If a judgment is obtained and satisfied, the balance of the cash deposit, if any, shall be ordered returned to the depositor.

Source L 1934, c 121, p 325, §3, L 1915, c 312, p 557, §2, as am L 1922, c 231, p 401, §1 [1924 suppl §135-47], L 1926, c 250, p 425, §1, L 1928, c 67, p 142, §1

2A:60-8. Failure to bring action; damages; judgment; return of balance of deposit. If no action is brought by the person claiming a lien under this article within the time limited by this section 2A 60-7 of this title, or if judgment shall go for the defendant, the court may order the return of the money deposited or the discharge of the bond and may fix and determine the amount of damages suffered by the owner for the seizure and detention of the motor vehicle or aircraft or part thereof, and render a judgment for such amount against the person claiming a lien under this article or the person seizing or detaining the same.

Source L 1934, c 121, p 325, §3, L 1915, c 312, p 557, §2, as am L 1922, c 231, p 401, §1 [1924 suppl §135-47], L 1926, c 250, p 425, §1, L 1928, c 67, p 142, §1

2A:60-9. Entry of appearance by owner. The filing of bond or depositing of cash by the owner or his lawful representative as provided by this article, shall be considered as the entry of a written appearance on his part in the action which the person claiming a lien under this article may bring within 30 days pursuant to section 2A 60-7 of this title.

Source L 1934, c 121, p 325, §3, L 1915, c 312, p 557, §2, as am L 1922, c 231, p 401, §1 [1924 suppl §135-47], L 1926, c 250, p 425, §1, L 1928, c 67, p 142, §1

2A:60-10. Sale of motor vehicle or aircraft if proceedings not taken by owner. If no proceedings are taken for the repossession of the motor vehicle or aircraft or part thereof by the owner or his legal representative as provided for in this article, such property so held by the garage keeper or operator of a hangar or place of storage, repair or supplies for aircraft, or aircraft mechanic may, after the expiration of 30 days from the date of the detention, be sold at public auction (subject to any prior lien, title or interest held by virtue of a prior conditional sale or a prior chattel mortgage properly recorded).

Source L 1934, c 121, p 327, §4, L 1915, c 312, p 557, §3, as am L 1922, c 231, p 402, §2, L 1924, c 201, p 424, §1 [1924 suppl §135-48], L 1925, c 33, p 96, §2

2A:60-11. Notice of sale; advertisement. Notice of sale authorized by section 2A:60-10 of this title shall be published for 2 weeks, at least once

in each week, in some newspaper circulating in the municipality, in which the motor vehicle, aircraft or part thereof is detained, also after 5 days' notice of such sale set up in the office of the sheriff of the county or counties where the motor vehicle, aircraft or part thereof is situated. Source L 1934, c 121, p 327, §4, L 1915, c 312, p 557, §3, as am L 1922, c 231, p 402, §2, L 1924, c 201, p 424, §1 [1924 suppl §135-48], L 1925, c 33, p 96, §2

2A:60-12. Disposition of proceeds of sale. The proceeds of the sale shall be applied to the payment of the lien and the expenses of seizure, if any, and of such sale. The balance, if any remaining, shall be paid to the owner of such property or his representatives. The balance, if not claimed by the owner within 60 days after the sale, shall be paid over to the overseer of the poor of the municipality, in which the motor vehicle, aircraft, or part thereof is detained, for the support of the poor.

Source L 1934, c 121, p 327, §4, L 1915, c 312, p 557, §3, as am L 1922, c 231, p 402, §2, L 1924, c 201, p 424, §1 [1924 suppl §135-48], L 1925, c 33, p 96, §2

Article 2. COMMON CARRIERS

Enact the following as a supplement to the Mechanics' Lien Law, Title 2A:60-105 et seq. At any time before judgment a judge of the superior court or a judge of the court before whom the civil action on a stop notice is pending, upon motion of the stop notice claimant and on written notice to all parties interested, may order any stop notice filed pursuant to section 2A.60-118 of the revision, Title 2A, to be amended, in matter of substance as well as in matter of form, whenever it shall appear that such amendment can be justly made; and whenever such amendment shall be ordered, the same shall be put in writing and signed by said judge and then filed in the office of the proper county clerk.

Note of Reporter. The Mechanics' Lien Law provides for amendment of lien claims (2A 60-135) and notices of intention (2A 60-114), there is no provision for amendment of stop notices. Under the original act stop notices were not filed but served on the owner, consequently there was no provision made for amendment. Today such notices are filed, and not being a pleading the stop notice cannot be amended by reason of the inherent power of the court. Cf. *Vreeland v Boyle*, 37 N J L 346 (Sup Ct 1875); *Belmont Coal & Lumber v James F Wood Builders*, 125 N J L 315, 15 A (2) 625 (Sup Ct. 1940). The power to amend should be extended to stop notices filed.

To follow Mechanics' Lien Law 2A:60-105 to 165. Moneys paid to contractor trust fund for payment of claims. All moneys received by a contractor from the owner or mortgagee of real estate or any leasehold or other interest therein, while a building is being erected, constructed, completed, altered, repaired or having an addition made thereto, are hereby declared to be trust funds in the hands of such contractor to be applied to the amount of all claims due or to become due and owing from such contractor to all persons furnishing labor or materials to him for the erection, construction or completion of the build-

ing or any alteration, repair or addition thereto, and any other reasonable and necessary charge in connection with the carrying on and completion of the work on the building

Moneys paid to subcontractor trust fund for payment of claims All moneys received by a subcontractor from the owner or mortgagee of real estate or any leasehold or other interest therein, or from a contractor, while a building is being erected, constructed, completed, altered, repaired or having an addition made thereto, are hereby declared to be trust funds in the hands of such subcontractor to be applied to the amount of all claims due or to become due and owing from such subcontractor to all persons furnishing labor or materials to him for the erection, construction or completion of the building or any alteration, repair or addition thereto, and any other reasonable and necessary charge in connection with the carrying on and completion of the work on the building

Moneys paid to mortgagor trust fund for payment of claims All moneys which are the proceeds of any mortgage on real estate or any leasehold or other interest therein, paid to any mortgagor by the mortgagee while a building shall be erected, constructed, completed, altered or repaired or having an addition made thereto, are hereby declared to constitute trust funds in the hands of the mortgagor for the purpose of paying the cost of the erection, construction or completion of the building or any alteration, repair or addition thereto, and for the payment of liens or encumbrances on the mortgaged property prior to the mortgage, the cost of procuring and financing the mortgage and any other reasonable and necessary charge in connection with the carrying on and completion of the work on the building

Note of Reporter. R S 2 124-15 to R S 2 124-18, make it a misdemeanor to convert funds paid out in connection with public and private improvements But, such statutes do not seem to create a right of civil action Cf *Raymond Concrete Pile Co v Federation Bank*, 288 N Y 452, 43 N E (2) 486 (1942)

However, R S 2 124-18 has now been extended to grant a civil remedy by R S 2 60-212 This latter statute creates a trust upon funds in the hands of a contractor erecting a public improvement and may be enforced by civil action *Stulz-Sickles v Fredburn*, 114 N J E 475, 169 A 27 (Ch 1933), *American Lumbermans v Bradley Construction Co*, 129 N J E 278, 19 A (2) 242 (E & A 1940) affg 127 N J E 500, 13 A (2) 78 (Ch 1940) but no extension has been enacted as to private improvements Subsequent to the Raymond case, the New York legislature extended its act to grant a civil remedy (P L 1942 C 808) and now appears as §§24(a), 25(b), 36(a) and 36(b), of the Lien Law

These statutes now grant a lien in favor of persons and may be enforced in bankruptcy

Wickes Boiler Co v Godfrey-Keeler Co C C A N Y 1941, 121 F (2) 415 cert den 314 U S 686

By enacting such an act, persons employed on private improvements will be protected as well as owners against liens, where the owner has paid the contractor

Enact the following as a supplement to the Mechanics' Lien Law, Title 2A:60-105 et seq. When a contract has been filed pursuant to sec-

tion 2A 60-116 of the revision, Title 2A, and the claim of the contractor has been paid, satisfied or settled by the parties or abandoned by the contractor, the contractor shall file with the proper county clerk a certificate duly acknowledged or proved, directing the proper county clerk to discharge the contract of record, which certificate shall contain

- a The date of the filing of the contract;
- b The file number indorsed thereon,
- c The name of the owner of the land named in the contract,
- d The location of the property, and
- e The name of the contractor

If the contractor shall fail or refuse to file such certificate, then upon motion by any proper party in interest, a judge of the superior court or of the county court of the proper county, on written notice to the contractor, or upon satisfactory proof that the contractor cannot be found, may upon good cause being shown order the contract discharged

The county clerk shall thereupon attach the certificate or order to the original contract and shall note on the record thereof "discharged by certificate" or "discharged by court" as the case may be, and for so doing, the county clerk shall be entitled to a fee of 25 cents for each certificate so filed and noted and a fee of \$2.00 for each order so filed and noted

Note of Reporter Although under the provisions of the mechanics' lien law the filing of a contract is in lieu of a mechanic's notice of intention (2A 60-116), there is no provision in the act for discharging the contract of record The proposed supplement follows the general tenor of 2 sections relating to discharge of mechanic's notice of intention (2A 60-158) and of stop notice (2A 60-131) The fee fixed is the same as that for discharging a notice of intention (R S 22 2-19, as am L 1941, c 253, p 675, §1) By enacting this supplement it will not be necessary for title searchers or lawyers closing title to determine whether the contractor may have a possible right of mechanic's lien claim

2A:61-1. Liens or encumbrances determinable. Whenever the state of New Jersey has any lien or encumbrance upon any lands and a civil action arising out of any previous lien or encumbrance on such lands is instituted, or where such action is brought to foreclose the equity of redemption under a sale of the lands for unpaid taxes or other municipal liens, or where such action is a strict foreclosure action to cure defects in a prior foreclosure and sale under any lien or encumbrance prior to the lien or encumbrance of the state and such action is instituted by the purchaser at a foreclosure sale or by the legal representatives, heirs, devisees, successors or assigns of the purchaser, or where a civil action is brought to quiet title to lands, the lien or encumbrance of the state or its priority may be brought in question and definitely settled by the court having jurisdiction of the subject matter of the action

Note of Reporter See Note of Reporter following alternate proposal

2A:61-3. Procedure in civil action; judgment;

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lien of state on sale under judgment cut off; state's claim made out of surplus; judgment barring state's lien. On the return of the summons, duly served, or on appearance for the state, the civil action may proceed as in other cases, and a judgment therein shall bind the state the same as if it had been made against an individual, and the lien of the state, on sale under such judgment shall be cut off and the claim of the state shall be made out of the surplus, if any, in the order or priority in which the encumbrance of the state stands, provided, however, that in any civil action to foreclose the equity of redemption under a sale for taxes or other municipal liens or in any civil action of strict foreclosure to cure defects and omissions in a prior foreclosure and sale, there may be entered a judgment barring and extinguishing any lien or encumbrance of the state on the lands described in the complaint, in case (a) no answer shall be made by the state within the time limited by the rules of civil practice, or (b) where a disclaimer shall be filed by the state, or (c) where it shall be determined that the lien of the tax or assessment or any part thereof or the lien or encumbrance theretofore foreclosed is prior to the lien or encumbrance of the state and the state does not elect to redeem. In any civil action to quiet title to lands there may be entered a judgment that the state has no lien, encumbrance or interest in the lands in case (a) no answer shall be made by the state within the time limited by the rules of civil practice, or (b) where a disclaimer shall be filed by the state, or (c) where it shall be determined that the state has no lien, encumbrance or interest in the lands.

Note of Reporter See Note of Reporter following alternate proposal

Alternate proposal to amending sections 2A:61-1 and 2A:61-3. In any action affecting real property upon which the state of New Jersey has or claims to have a lien or encumbrance, the state of New Jersey may be made a party defendant in the same manner as a private person.

Note of Reporter The state can be joined to a civil action only if it has granted consent to being sued. Annotation 42 A L R 1464, supplemented 50 A L R 1408. Consent to being sued is found in R S 2A 61-1. Such consent is limited to 3 types of action, (a) conventional foreclosures, see *Irrington v Ollemer*, 128 N J E 402, 16 A (2) 563 (Ch 1940), aff'd 131 N J E 189, 24 A (2) 368 (E & A. 1941), (b) strict foreclosure of tax sale certificate, and (c) strict foreclosures. The act is not broad enough to permit a civil action of quiet title to be brought against the state. In many instances there is a question whether the state has a lien or encumbrance against certain lands and yet there is no way in which the question may be determined. The United States permits itself to be joined in a quiet title action 28 U S C §2410, *Van Keuren v United States*, 138 N J E 66, 46 A (2) 815 (Ch 1946) and the state cannot be joined. There is no reason why the state should not be joined. An amendment to permit such an action is suggested.

As an alternate to amending sections 2A 61-1 and 2A 61-3 consideration should be given to enacting a general statute permitting the joinder of the state

in any civil action affecting real property. This would be more advisable and would permit joinder of the state in a partition action as well as other actions. The proposed alternate statute is based somewhat on New York Civil Practice Act, section 214.

2A:66-1. When authorized; proof required.

The county court of any county wherein any mortgage on real estate or chattels, or both, shall be or shall have been recorded, or the superior court, may in a civil action brought by any mortgagor or party in interest, direct the county clerk or register of deeds and mortgages of such county to cancel of record any such mortgage when the plaintiff shall

a Present satisfactory proof that the principal and interest due on the mortgage have been fully paid, or

b Deposit with the county clerk of the county in which the mortgage is of record any balance of principal and interest due on the mortgage according to the terms thereof; or

c Present satisfactory proof that (1) the mortgage was recorded at least 30 years before the commencement of the action, and (2) within 30 years immediately preceding the commencement of the action no payment, either of interest or principal, has been demanded or made on the debt which the mortgage was given to secure and that such debt has not been admitted or acknowledged by the mortgagor, or by the successors in right, title and interest of the mortgagor within said 30 year period, and (3) if the plaintiff shall be unable to produce the mortgage and the bond, if any, that the debt secured by the mortgage matured by the terms thereof more than 30 years next prior to the commencement of the action and that the plaintiff has, in good faith, made diligent search for the mortgage and the bond secured thereby, if any, and has been unable to find the same, and that, to the best of plaintiff's knowledge and belief, the mortgage and bond, if any, have been lost, destroyed or mislaid, and that the mortgagee and the successors in right, title and interest of the mortgagee, have no further interest therein.

Source R S 2 66-1

Note of Reporter R S 2 66-1 to R S 2 66-3, inclusive, have been replaced by suggested new legislation. The present statute outlines procedure in detail which is covered by the rules. The provisions of 2A 66-1(c) have been influenced by *Blue v Everett*, 55 E 329, aff'd 56 E 455, discussing the conclusive presumption of payment after the lapse of 20 years without demand or acknowledgment, unaccounted for and unexplained. The 30 year period in the redraft is arbitrary. It is 10 years more than the 20 year limitation period and should be a satisfactory period of time to justify a judgment for cancellation.

2A:88-11. Jurors for courts for which no panels are drawn; request for; residence of. Jurors needed by courts for which no panels have been drawn shall be furnished by the jury commissioners on request made at least 10 days prior to the trial date of the cause in which they are

to sit Such request shall be made by the senior judge of the court making the request and shall specify the trial date, the number of juries, the number of jurors on each jury, and the number of talesmen deemed necessary

The jurors shall be selected so far as possible from the current general petit juror panel and the persons selected shall, if possible, reside in the vicinity of the trial court A list of such jurors shall be certified to the trial court and summoned by the sheriff or by an officer deputized by him for that purpose on order addressed to him by such court

2A:88-16. Improper exclusion; failure to summon; penalty. Any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen on account of such citizen's race, color, creed, national origin or ancestry shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined not more than \$5,000

2A:89-6. Oath of foreman; deputy foreman; grand jurors. To the foreman and deputy foreman of the grand jury there shall be administered the following oath

"You as foreman (deputy foreman) of this grand inquest to sit in behalf of the state of New Jersey in and for the county of . . . , shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge, or in any way come to your knowledge touching the present service; the counsel of the state and your own counsel you shall keep secret, you shall present no one through envy, hatred or malice, neither shall you leave any one unrepresented for fear, favor or affection, for reward, gain or the hope thereof; but you shall present all things truly as they shall come to your knowledge, according to the best of your skill and understanding, so help you God "

To the grand jurors as a body there shall be administered the same oath except that the beginning words "You as foreman (deputy foreman)" are to be replaced with the words "You as members".

2A:90-7. Foremen of petit or other trial juries. In each case, after the petit or other trial jury has been sworn in and before the trial begins, the trial judge shall designate by number the juror who shall act as foreman The foreman shall then exchange seats with the first juror selected

2A:97-1. Privileges of witnesses in legal proceedings. In any proceeding before any tribunal, board, body, or officer of this state, other than a court, the privileges of witnesses shall be the same as those afforded to witnesses in a civil action under the rules governing the civil procedure in the superior court of this state.

2A:97-4. Privilege as to source of information obtained in connection with newspaper work. No person engaged in, connected with, or employed on any newspaper shall be compelled to disclose in any civil action before the court the source of any information procured or obtained by him and published in the newspaper on which he is engaged, connected with, or employed

Source New

2A:103-10.1. Procedure relating to sentencing repeating offenders. If at any time, before sentence, it shall appear that a person convicted of murder, manslaughter, kidnapping, treason or a high misdemeanor has previously been convicted as set forth either in sections 2A 103-7, 2A 103-9, 2A 103-10, it shall be the duty of the prosecutor of the county in which such conviction was had, to file an accusation accusing the said person of such previous convictions Whereupon, the court in which such conviction was had, shall cause the said person to be brought before it and shall inform him of the allegations contained in such accusation and of his right to be tried as to the truth thereof, according to law and shall require such offender to plead to the accusation If such offender refuses to plead or remains silent or pleads not guilty, a not guilty plea shall be entered and a jury shall be impanelled to inquire whether the offender is guilty as outlined in sections 2A 103-7, 2A.103-9 and 2A 103-10

If the jury finds said offender guilty or if he pleads guilty or non vult, the court shall sentence him to the punishment prescribed in sections 2A 103-7, 2A 103-9 and 2A 103-10 as the case may be The aforesaid allegation shall be filed before the defendant is sentenced.

2A:103-13. Aiding, abetting, etc. Any person who knowingly aids, abets, counsels or procures in the commission of a high misdemeanor or misdemeanor shall be guilty as a principal

2A:105-4. Pregnant woman producing or procuring miscarriage. A pregnant woman who uses or submitted to the uses of any instrument, with intent thereby to produce or procure her own miscarriage, unless the same is necessary to preserve life, shall be guilty of a misdemeanor

Source New

2A:114-4.1. Corrupt solicitation by police, firemen or other public officer or employee. Any member or employee of any police or fire department, or any other officer or employee of any state, county, municipality or other governmental body or agency who shall corruptly solicit or receive any money, gift or reward to influence his official action, shall be guilty of a misdemeanor, and shall, in addition to the punishment prescribed for such offense, be forever disqualified from holding public office or employment under this state or any of its political subdivisions.

PROPOSED ADDITIONAL LEGISLATION

2A:114-17.1. Immunity for giving evidence. Any person violating sections R S 2 114-14, 2 114-15, 2 114-16 or 2 114-17, who shall as a witness for the prosecution, give relevant and material evidence in the prosecution of another charged with a violation or conspiracy to violate any of the said sections shall not be liable to indictment or conviction under said sections, or for conspiracy therefor.

2A:176-52.1. False representations in permit applications or in purchases. Any person who shall give or cause to be given any false information, or shall sign a fictitious name or address, in applying for a permit to purchase or possess a machine gun or automatic rifle, or in purchasing or otherwise acquiring delivery of the same, shall be guilty of a high misdemeanor

Note of Reporter This section is new and is designed to provide criminal sanctions for violations

2A:178-7.4. Acquittal; disposition of moneys seized; claimant's application for return; application for forfeiture. 4. If the trial or other ultimate disposition of such charge or charges, indictment or indictments, result in an acquittal or other final termination of such proceedings in favor of the person or persons so arrested, as aforesaid, in connection with which arrest the said money, currency or cash was seized or captured, as aforesaid, then, the person or persons claiming to own the said money, currency, or cash, may within 2 years from the date of such acquittal or other final termination, in addition to any other remedy now provided by law, make application, on giving 10 days' prior notice thereof to said county treasurer, to a judge of the county court of said county, for an order declaring such money, currency, or cash to be the property of such person or persons, and ordering the same to be returned by the said county treasurer. At any time after the expiration of said period of 2 years from the date of acquittal or other final determination, the county treasurer may make application to a judge of the county court for an order to show cause why such money, currency or cash so seized or captured shall not be forfeited to the sole use and gain of the county; such order to show cause shall then be served upon the person from whom said money, currency or cash was so seized or captured, in accordance with the rules of practice and procedure. Upon the return of the said rule, hearing shall be conducted in summary manner; provided, however, that proof, to the satisfaction of the court, shall first be established that no suit or proceeding then pending and undetermined, has been filed in any court of competent jurisdiction, seeking recovery

Source L 1941, c 70, p 157, §4, as am L 1945, c 296, p 848, §1

Note of Reporter Retain the proviso as at present

2:178-10. Any person who shall be guilty of an offense under the provisions of section 2 176-60

of this title who shall first give information under oath to the prosecuting authorities or to a magistrate, tending to the conviction of any other person charged with an offense under said section 2 176-60, and who shall give evidence when called, shall be exempt from prosecution or punishment, or, if more than 1 person shall be implicated in any murder, or in the inflicting of any injury or damage by the use of dynamite or any other explosive, with intent to kill or injure, the first of the persons so implicated who shall give information under oath concerning other participants and who shall give testimony thereof whenever called, shall be exempt from prosecution or punishment.

2A:190-1. Repeal and substitute in lieu thereof, the following: If any person in confinement under commitment, indictment or under any process, shall appear to be insane, the assignment judge, or judge of the county court of the county in which such person is confined, may, upon presentation to him of the application and certificates as provided in Title 30, chapter 4, institute an inquiry and take proofs as to the mental condition of such person. The proofs herein referred to may include testimony of qualified psychiatrists to be taken in open court by the judge, either in the presence of a jury specially impanelled to try the issue of insanity alone, or without a jury, as the judge in his discretion may determine. It shall be competent for the judge if sitting without a jury, or the jury, if one is impanelled, to determine not only the sanity of the accused at the time of the hearing, but as well the sanity of the accused at the time the offense charged against him is alleged to have been committed.

If it shall be determined after hearing as aforesaid, that the accused was sane at the time the offense charged against him is alleged to have been committed, but is insane at the time of the hearing, the judge shall order such person removed from imprisonment and to be confined in an institution as provided by Title 30, chapter 4, section 82, and his custody and release from such institution to be governed by the provisions of Title 30, chapter 4, section 82, aforementioned.

If it shall be determined after hearing as aforesaid, that the accused was insane at the time the offense charged against him is alleged to have been committed, the charge against him shall be dismissed on this ground and the records of the proceedings so noted. In this event, the judge or jury, as the case may be, shall also find separately whether his insanity in any degree continues, and, if it does, shall order him into safe custody and direct him to be sent to the New Jersey State Hospital at Trenton, to be confined as otherwise provided by law, and maintained as to expense as is otherwise provided for the maintenance of the criminal insane,

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until such time as he may be restored to reason, and no person so confined shall be released from such confinement except upon the order of the court by which he was committed. This section shall not be construed to prevent the use of the writ of habeas corpus.

A finding of sanity at the time of the commission of the offense charged against such person in this proceeding shall not preclude the accused from interposing the defense of insanity at any subsequent trial of the offense charged.

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Chapter 2.

3A:2-3. Formal requisites of a will. Except as provided in section 3A 2-7, a will to be valid shall be in writing and signed by the testator, which signature shall be made by the testator, or the making thereof acknowledged by him, and such writing declared to be his last will, in the presence of 2 witnesses present at the same time, who shall subscribe their names thereto, as witnesses, in the presence of the testator.

Source R S 3 2-3, as am L 1939, c 139

Note of Reporter The last words of this statute as it stands presently, providing that "a will to be valid"—"shall be probated in the office of the surrogate or in the orphans' court of the county in which the testator resided at the time of his death, or in the prerogative court of the state of New Jersey"—were amended into this statute in 1939. The purpose of the amendment was to prevent a will from having any efficacy, in case it was probated only in a foreign jurisdiction, say, New York, for then the parties in interest might avoid New Jersey transfer inheritance taxes and at any event surrogate's and superior court clerk's fees (those fees are substantial when the fiduciary accounts for a large estate) and the employment of New Jersey counsel, etc. However, the amendment was unconstitutional in so far as the will affected title to real estate. (See R S 3 2-13, likewise amended in 1939.) Probate could not be made a condition necessary to the passage of title to real property devised, there is a right to trial by jury as to the validity of a devise, and the jury is the only body which can be permitted to determine its validity. Incidentally the amendment deprives a will of personality of any validity prior to probate, thus unfortunately (and contrary to the prior law) depriving the executor of any standing until the will is probated.

Because of the unconstitutionality of the 1939 amendment, the substance of the clause has been added to the last sentence of R S 3A 2-23 and appears herein as proposed additional legislation.

Repeal R. S. 3:2-6, 3:2-10, 3:2-26 and 3:2-27, all having to do with nuncupative wills. Comment: Nuncupative wills are practically obsolete, the last reported case being *In re Male's Will*, 49 N J Eq 266 (Prerog 1892), wherein it was said

"Nuncupative wills, as a rule, are not favored by courts, for the very obvious reason that they are at best uncertain productions, depending upon the attention, intelligence, memory and honesty of those who surround the dying testator. Not only may the remembrance of language be defective, but its intended meaning may be misapprehended, and, indeed, loose expressions of desire may, either stupidly or dishonestly, be fabricated into a testamentary act, where such an act was not intended."

3A:2-7. Wills made by members of armed forces in time of war. A will made by any per-

son while engaged in active military service as a member of the armed forces of the United States in time of war shall be valid if it be in writing.

Source R S 3 2-7

Note of Reporter The present statute R S 3 2-7 throws the law back to where it stood prior to the statute of frauds (1676). In *re Straulina's Estate*, 4 N J Misc 599 (Or Ct 1926). Under the law as it stood then, an oral will apparently was sustainable provided there was 1 or perhaps 7 witnesses. At any event a will was valid if it was in writing—even though it was unsigned and unattested.

R S 3 2-7 is applicable to soldiers "while in active military service" at the time the will is made. Under *In re Beck*, 142 N J Eq 15 (Prerog Ct 1948) this means "that there must be a war and the soldier in question must, in fact, be engaged in carrying it on." However, under *In re Sheridan*, 21 N J Misc 473 (Or Ct 1943) the words "actual military service" have been held not to extend to one in a training camp far from the stress of enemy operations. The statute codifies the ruling of *In re Beck*.

As stated in *In re Beck*, a soldier's informal will is invalid under R S 3 2-7 unless the will deals only with personalty or "unless it can be shown that the gifts of personalty were independent of the gifts of realty." The proposed amendment above stated extends the law so as to cover real estate. Unlike the situation prior to 1676, most of our wealth today is in personal estate. If the will is probated in the county court or superior court, then (particularly in view of 3A 2-11) the will should be allowed to pass title to real estate.

Unlike R S 3 2-7, the proposed statute above does not cover "a mariner or seaman while at sea." This is, so far as present practices are concerned, an obsolete provision.

Furthermore, the above statute does not include the words "and nothing contained in this chapter shall affect such dispositions." These words were added to the statute by the revisers in 1937. This is a most unfortunate provision. Under it R S 3 2-15 and 3 2-16, the provisions as to after-born children, etc., R S 3 2-17, the construction of the words "died without issue", and R S 3 2-18, the provision against lapsed gifts, etc. are all inapplicable.

3A:2-13. Effect of will made with proper formality. A will made in accordance with the provisions of section 3 2-3 or section 3 2-7 of this title by a person competent to make a will shall be sufficient to devise, pass and bequeath all estates and property, real and personal, including estates pur autre vie, and all rights of any kind, and to appoint a guardian or guardians to a child of the testator during infancy, and a widow may bequeath the crop of her ground, as well of her dower as of her other real estate.

Source R S 3 2-13, as am L 1939, c 139

Note of Reporter The above statute was amended in 1939 so as to add "and probated as provided in section 3 2-3 of this Title." These words were eliminated above for the reasons indicated in the Note of Reporter to 3A 2-3. The object sought to be accomplished by these words is to be carried out in 3A 2-23.

PROPOSED ADDITIONAL LEGISLATION

3A:2-17. Construction of words "die without issue". In a devise or bequest of real or personal property the words "die without issue" or "die without lawful issue" or "have no issue" or other words which may import a want or failure of issue of a person in his lifetime, or at his death, or an indefinite failure of his issue, shall be construed to mean a failure of issue at the death of such person, unless a contrary intention shall otherwise appear by the will

Source R S 3 2-17

Note of Reporter R S 3 2-17 is ambiguous in that it leaves it undetermined whether the words "in case A dies without issue" refers to a failure of issue in A's lifetime or at his death. A may have issue in his lifetime but all of them may predecease him. The ambiguity is resolved by stating that the phrase shall be construed to mean a failure of issue at the person's death, unless a contrary intention appears in the will

The above proposed statute should be made effective as to wills of persons executed after the enactment of the act

3A:2-23. Where will is to be probated. The will of any person resident within any county of this state at his death may be probated in the superior court, or as provided by the rules of the supreme court, in the surrogate's or county court of the county. If probated by the surrogate's or county court of another county in the state, the probate shall not be impeachable collaterally. If probated without the state, the will shall, except as to real estate without the state, be without validity unless or until the probate is granted within the state

Source R S 3 2-23, and 3 2-3, as am L 1939, c 139

Note of Reporter The first sentence represents the existing law. See sources cited. The second sentence codifies the common law as it exists in a number of jurisdictions. There is no decision on the matter in New Jersey, but a legislative pronouncement seems called for, as it might be held that if a decedent died a resident of one county and the surrogate of another county issued original letters, the letters are wholly void

As to the third sentence see the Note of Reporter to R S 3A 2-3. Under the amendment made to R S 3 2-3 by L 1939, c 139, it was provided that "a will to be valid shall be probated in the surrogate's office or orphans' court or the prerogative court"

3A:2-30. Judgment for probate; conclusive effect on real title after 1 year. Where judgment is entered by any surrogate's or county court in this state or the superior court of the state, admitting to probate the will of any person whether or not a resident of the state at his death and 1 year has elapsed after his death, the judgment, unless set aside, shall, as to all matters adjudicated thereby, be conclusive upon the title to real estate

(By the second section of this act, it should be provided that the act shall take effect 1 year after its enactment)

Note of Reporter This idea which first appeared in Rule 3 88-5 of the tentative draft of rules (dated May 1, 1948) received much approbation from the bar, but no statute to this effect was ever enacted, and hence the rule was not adopted. It is very much broader than R S 3 2-11 which renders a probate judgment conclusive evidence as to "the

formal execution of the will" when (a) the attestation clause contains certain provisions, (b) the deposition of at least 1 witness to the will states that the testator signed the will, and (c) 7 years have elapsed after probate. Furthermore it provides that the time during which any heir of the testator is under 21 shall not be computed as part of the 7 years. The above proposed act makes the probate judgment conclusive not only as to the formal execution of the will, but also as to the competency of the testator and his freedom from undue influence, as well as to all other matters which are adjudicated by a probate judgment

The 1 year clause preserves the constitutional right to try before a jury the validity of a devise. It is true that under this clause such actions will be very unusual. Hence on first thought some lawyers may prefer to make this statute of limitations effective as to all actions not commenced within 1 year after entry of the probate judgment. But the 1 year clause ties in with R S 3 25-21, as amended, which makes all the testator's debts a lien on his lands for a period of 1 year after his death, under the proposed act and R S 3 25-21, the devisee can give good title after the lapse of the year. There is no practical reason for requiring a trial by jury when the validity of a devise is to be tested, nor is there any good theoretical reason. C J Beasley said of the matter in *Wilkinson's Executors v Trustees*, 38 N J Eq 514 (E & A 1884)

"The ground of the practice [requiring a jury trial as to the validity of a devise] seems to have been that extravagant overestimate of the importance of an estate in lands, which everywhere presents itself in the system of the common law, a superstition that led to the notion that such an interest was entitled to all the protection which results from a trial by the country"

Repeal R. S. 3:2-31 to 3:2-36 under which a will contest may be certified by the county court into the superior court for trial by jury, whose findings are conclusive on the county court. Under Rule 3 39-1, which is made applicable to the probate division of the county court by Rule 5 3-8, the county court may try with an advisory jury any issue not triable of right by a jury, or it may, with the consent of all parties, order a trial of any such issue with a jury whose verdict has the same effect as if trial by jury had been a matter of right. There seems to be no reason to make a jury's verdict conclusive on the county court with respect to a probate issue while, as to a chancery issue, it cannot become conclusive on the court except with the consent of the parties

In practice in Essex county these statutes have not been used for over 30 years

Chapter 3.

3A:3-1. Definitions. As used in this chapter,

1 "Intestate" means any person who dies without having made an effective testamentary disposition of all or any part of his property,

2 "Property" means real property, personal property, and mixed property of which no effective testamentary disposition has been made by the intestate,

3 "Net estate" means the total of all property of an intestate after the payment of funeral charges, administration expenses, and debts

3A:3-2. Descent and distribution. The property of an intestate shall vest and pass as follows

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A Share of surviving spouse The surviving spouse shall receive the following

1 One-half of the net estate if the intestate is survived by lawful issue, or

2 The first \$10,000 and one-half of the residue, if there is no lawful surviving issue, but the intestate is survived by 1 or more of his parents, or the issue of a parent, or

3 All the net estate, if there is no lawful surviving issue nor parent nor issue of a parent

B Shares of others than surviving spouse The share of the net estate not passing to the surviving spouse, or the entire net estate if there is no surviving spouse, shall vest and pass as follows:

1 In equal portions to the children of the intestate, and such persons as legally represent the children if any of them have died before the intestate.

2 If the intestate shall not be survived by children or such persons as legally represent the children if any of them have died before the intestate, in equal portions to the surviving parents, brothers, sisters, and such persons as legally represent brothers or sisters if any of them have died before the intestate. Each parent surviving the intestate shall be entitled to the same share as a brother or sister

3 If there is no lawful surviving issue, nor parent, nor issue of a parent, in equal portions to the surviving grandparents

4. If there is no lawful surviving issue, nor parent, nor issue of a parent, nor grandparent, in equal portions to the issue of deceased grandparents in the nearest degree of kinship to the intestate per capita without representation

5 If the intestate shall not be survived by any person entitled to take under the preceding 4 subsections, then the net estate shall vest in and pass to the state of New Jersey

3A:3-3. No distinctions between whole and half-blood. Relatives of the half-blood shall take equally with those of the whole blood in the same degree, and the representatives of such relatives shall take in the same manner as the representatives of the whole blood

3A:3-4. Unequal degrees of kinship. Where persons entitled to share in the estate of the intestate are all in equal degree of kinship to the intestate, their shares shall be equal, where such persons are of unequal degree of kinship to the intestate, the whole shall be distributed to those entitled thereto, according to their respective stocks, so that those who take in their own right shall receive equal shares and those who take by representation shall receive the share to which the parent whom they represent, if living, would be entitled

3A:3-5. Illegitimate children. For the purpose of inheritance under this chapter to, through,

and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants and collaterals, and they may inherit from him. If the parenthood of the father of an illegitimate child shall be established by any court in any direct or collateral proceeding, then for the purpose of inheritance under this chapter to, through, and from such illegitimate child, such child shall be treated the same as if he were the legitimate child of his father, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants and collaterals, and they may inherit from him. When parents of an illegitimate child shall marry subsequent to his birth, such child is deemed to have been made the legitimate child of both of his parents for the purpose of inheritance under this chapter

3A:3-6. Aliens. In taking title to real or personal property under this chapter, it shall be no bar to a person that he, or any ancestor or other person through whom he traces his title, is or has been an alien

3A:3-7. Advancements. If a person dies intestate as to all his estate, property which he gave or advanced in his lifetime to any person entitled to take under R S 3A 3-2 shall be counted towards the share of such person distributable to him under this chapter, and to the extent that it does not exceed such share shall be taken into account in computing the estate to be distributed. The value of the advancement shall be considered as at the time when the advance came into possession or enjoyment, or at the time of the death of the intestate, whichever first occurs. Every gratuitous inter vivos transfer shall be presumed to be an absolute gift and not an advancement unless shown to be an advancement

3A:3-8. After born kindred. When any person entitled to take under R S 3A 3-2 is born after the death of the intestate, but begotten before the death of the intestate, such person shall be conclusively presumed to have been born within the lifetime of the intestate and to have survived him. With this exception, the devolution and distribution of property subject to R S 3A 3-2 shall be determined by the relationships existing at the time of the death of the intestate

3A:3-9. Descent when devisee dies before testator. If any real property in this state shall have been heretofore or hereafter devised by the owner thereof to any person, and at the death of that person to go to his heirs, or to his issue, or to the heirs of his body, and such devisee shall have either heretofore or hereafter died before the death of such owner, and there are no relatives of the testator capable of inheriting the same under R S 3A 3-2, then in such case, after

the death of such owner, the said real property shall go to and be vested in the children of such devisee, and to such persons as legally represent said children if any of them have died before said devisee, in equal parts as tenants in common, in fee

3A:3-10. Posthumous children. If a father dies testate, any posthumous child, in case no provision is made for him by the will, shall, unless expressly excluded or barred thereby, inherit the property of the father in the same proportion and manner as if the father had died intestate. The share of any such child shall be taken from the devisees and legatees under the will, ratably and in proportion to their respective interests therein

Repeal R.S. 3:4-1 to 3:4-3. Proof of descent of real estate.

Note of Reporter This is a statute which is practically never used and is quite anomalous in that there is no judgment or adjudication by the court, except a certificate indorsed upon the petition or affidavit stating that the court is either satisfied as to the truth of all testimony given by the witnesses in open court or otherwise, as the case may be. Proofs and papers are then recorded in the county clerk's or register's office, and the record becomes presumptive evidence of the matters therein stated

In the Model Probate Code, §195, and most states (26 C J S, p 1134), a judgment can be entered in a proceeding such as this, which is binding and conclusive on all the parties before the court. See, for example, §§311 to 313, New York Surrogate's Court Act. We have on our books a statute which is broad enough to enable the county court (in the law division) and superior court to adjudicate conclusively on the very questions involved in such a proceeding—namely, the Uniform Declaratory Judgment Act, R S 2 26-66 et seq, particularly R S 2 26-68 and 2 26-71(a). It seems to be unnecessary to have another statute on our books to cover the same matter, especially one so little used, which leads to an inconclusive result

Spouse Taking Against Will.

3A:4-1. When surviving spouse may elect to take against will. When a married person residing in this state dies testate, a personal right of election is given to the surviving spouse to take his or her share of the estate as in intestacy, subject to the limitations, conditions and exceptions hereinafter stated

a Intestate share not over \$5,000 If the value of the intestate share of such surviving spouse in the estate does not exceed \$5,000, then the surviving spouse may elect to receive his or her intestate share absolutely which shall be in lieu of any provision for his or her benefit in the will

b Intestate share over \$5,000

1 If the value of such intestate share exceeds \$5,000, and if the aggregate of the provisions under the will for the benefit of the surviving spouse, including the principal of a trust, a legacy or devise, or any other form of testamentary provision and any portion of the net estate undisposed of by such will which passes to the surviving spouse pursuant to 3A 3-2 of this title, is less than the amount of such intestate share, then the surviving

spouse may elect to receive that amount which when added to the value of such items will equal such intestate share and the terms of the will shall otherwise remain effective. The value of the principal of a trust shall be included for the purpose of determining what amount, if any, the surviving spouse is entitled to receive pursuant to this subdivision (b) (1) when by the terms of the will such principal is left in trust to pay to or apply to the use of the surviving spouse all of the net income therefrom for life in annual or more frequent installments. Likewise if such will creates a legal life estate, an annuity or any other form whereby the surviving spouse receives not less than all of the net income for life in annual or more frequent installments the property subject to the life estate or capital value of the fund producing the income shall be included for the purpose of determining what amount if any the surviving spouse is entitled to receive pursuant to this subdivision (b) (1). All other legacies and devises given to the surviving spouse from the net estate shall be valued at the actual value of the interests given to the surviving spouse

2 Election to receive \$5,000 in value absolutely. If the value of all absolute legacies and devises, and any portion of the net estate undisposed of by said will which passes to the surviving spouse pursuant to 3A 3-2 of this title is less than \$5,000, the surviving spouse shall have a limited right to withdraw from the principal of any trust for the benefit of such surviving spouse the difference between (i) the value of such absolute interests of the surviving spouse under such will and under 3A 3-2 of this title, and (ii) said sum of \$5,000

c. Right of surviving spouse limited to one-half. In exercising the right of election herein granted, the surviving spouse shall in no event be entitled to take more than one-half of the net estate of the decedent after the deduction of debts, funeral and administration expenses, and any estate tax, and also after the deduction from the share of the surviving spouse of any transfer inheritance tax which would have been payable out of such share had said married person died intestate, and the words "intestate share" whenever used in this chapter shall in no event be construed to mean more than one-half of such net estate

d Husband's desertion or failure to support. No husband who has deserted his wife for a term of not less than 2 years immediately preceding his death, nor who has abandoned his wife or separated himself from her and refused or neglected to maintain and provide for her shall have the right of such an election

e Wife's desertion. No wife who has deserted her husband for a term of not less than 2 years immediately preceding her death shall have the right of such an election

f Effect of divorce. The right of election shall

not be available to a spouse against whom or in whose favor a final judgment of divorce recognized as valid by the law of this state has been rendered. Nor shall such right of election be available to a spouse who has procured without the state a final decree or judgment dissolving the marriage with the testator which is not recognized as valid by the law of this state.

g Effect of election. When any such election shall have been made the will shall as far as possible be effective as to the residue remaining after the elective share has been deducted.

h Dower and curtesy. An election under this chapter shall be in lieu of any right of dower or curtesy.

3A:4-2. Notice of right to elect. Within 60 days from the date of the probate of the will, the executor, executors or administrator with the will annexed shall notify the surviving spouse in writing of the date before which a written election must be filed by or on behalf of such surviving spouse by mailing the same to the last known post-office address of such surviving spouse. Such notice may be included in the notice of the probate of the will.

3A:4-3. Time limitation for filing election. The election by a surviving spouse to take the share hereinbefore provided may be made at any time within 6 months after the date on which the will of such married person has been admitted to probate. The time to make such an election may be enlarged before its expiration by judgment of the court admitting such will to probate for a further period of not exceeding 6 months upon any 1 application. If a surviving spouse shall default in filing such an election within 6 months after such will has been admitted to probate, the court admitting such will to probate may relieve such surviving spouse from such default and authorize the making of such election within a period to be fixed by judgment, providing no judgment settling the account of the fiduciary has been made and provided further that 12 months have not elapsed since the admission of such will to probate. Such application for enlargement of time to elect or for relief from default in electing shall be made upon a complaint showing reasonable cause and on notice given to such persons and in such manner as the court may direct.

3A:4-4. Election in writing and filed. The election to take the share hereinbefore provided shall be in writing acknowledged by such surviving spouse (or guardian in his behalf) and in case the will shall be admitted to probate in the county court, shall be filed in the office of the surrogate of the county in which the will was admitted to probate, or in case the will shall be admitted to probate in the superior court, shall be filed in the office of the clerk of the superior court.

3A:4-5. Right of election personal to surviving spouse. The right of election of the surviving spouse is personal to him. It is not transferable and cannot be exercised subsequent to his death, but if the surviving spouse is an infant or incompetent, the court may order the guardian of his estate to elect for him.

3A:4-6. Waiver of right to elect. The right of election of a surviving spouse hereinbefore given may be waived with or without consideration before or after marriage by a written contract, agreement or waiver signed and acknowledged by the party waiving the right of election. Such written contract, agreement or waiver may be filed in the same manner as provided in 3A:4-4 hereof.

3A:4-7. This chapter shall apply to married persons who shall die testate after December 31, 1951, and who shall leave a will, or codicil thereto, thereafter executed.

Note of Reporter. The purpose of this chapter is to assure to the surviving spouse of a decedent (married persons) substantial rights in the estate of such decedent. Dower and curtesy in a modern estate where assets consist largely of personal property and where real estate is commonly held in corporate or partnership names no longer effectively serve the purpose. In recognition of the inadequacy of dower and curtesy and the need for reform, 22 common law states, commencing with New York in 1930, have granted to the surviving spouse the right to elect to take what in most instances amounts to an intestate share of real and personal property against the will of decedent, unless substantially similar provisions are made for the surviving spouse outright or in trust. New York and 8 other states have abolished dower and curtesy as well, whereas in the other 14 states the statutes providing for dower and curtesy have not been repealed. The Federal Revenue Act of 1948, in providing for the "marital deduction" in the federal estate tax proceeding has also recognized the right of the surviving spouse in the estate of decedent. The following comments elaborate in some detail on the technical provisions of this chapter.

1 **Constitutionality.** The constitutionality of statutes of this type have been recognized in New York and elsewhere. *Irving Trust Company v. Day*, 314 U. S. 556, 137 A. L. R. 1093, 182 Misc. 937, aff'd 267 App. Div. 985, app. den. 268 App. Div. 849, cert. den. 324 U. S. 865, 155 Misc. 233, aff'd 246 App. Div. 546.

2 **"Married person"** is used without special definition. The status of married persons, including those who may have obtained out-of-state divorces, is the subject of judicial decision from time to time. To establish a right to elect, the surviving spouse must have the status of a married person within the meaning of that term as judicially defined.

3 **Desertion.** No right of election is given to a surviving spouse who has deserted the other or to the husband who has neglected to provide for the support of his wife. "Desertion" is used as defined in 2:50-2. "Failure to support" is used as defined in 2:50-39. It is intended to bar a surviving spouse who has "deserted" the decedent at the time of death, notwithstanding the fact that such desertion may not have continued for 2 years. Mere separation is not intended to deprive a surviving spouse of the right of election. *Sanchez v. Sanchez*, 58 N. Y. S. 2d 230.

4 **Divorce.** (a) If either spouse obtains a divorce in New Jersey or elsewhere which divorce is recognized as valid in New Jersey, the survivor will be barred from any right of election.

(b) A surviving spouse is also barred if he (or she) obtains an out-of-state divorce even though such divorce is not recognized as valid in New Jersey. Such conduct is tantamount to desertion.

5 **Trust for the benefit of the wife.** The right of

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election is not available to a surviving spouse if the will creates a trust for the benefit of the surviving spouse for life, the principal of which (when added to outright legacies and devises) equals or exceeds the wife's intestate share (as limited by 3A 4-1(c)). But see paragraph 6 *infra*.

(a) Any trust for the surviving spouse with the customary powers of investment and the usual directions for allocations as between principal and income, pursuant to which the trustee is directed to pay or apply to the use of the wife all of the net income in annual or more frequent installments, is intended to satisfy the statute so long as it does not operate to impair the substantial rights of such surviving spouse. In New York, trusts for the benefit of the wife in form but which by design or otherwise are not administered to provide the substantial benefits intended by the statute have been condemned as illusory. *Matter of Curley*, 245 App Div 255, 280 N Y S 80, aff'd 269 N Y 548, 199 N E 665. The implications of the decision led to the amendment of section 18 of the New York Decedent Estate Law by the Laws of 1936, chapter 234 so as to provide that the grant of the customary administrative powers, including discretionary investment powers, should not give the surviving spouse a right of election. *Matter of Curley* is so extreme that we consider it unnecessary and undesirable to specify in the statute that the grant of enumerated powers, all customary in the modern trust, will not give the surviving spouse a right of election. The New Jersey statute, like the Revenue Act of 1948 providing for the marital deduction when property is left in trust under certain conditions, does not deal with specific powers. Also see Federal Estate Tax Regulations 105, section 81.47.

(b) The trust must be for the full life of the surviving spouse, not for a shorter period, i.e., until remarriage. Like the marital deduction trust under the Revenue Act of 1948, the trust to satisfy this statute must be a separate trust for the sole benefit of the surviving spouse so long as such spouse lives. It is not intended, however, that the frequently used discretionary power granted to trustees to administer separate trust funds in solido will render an otherwise valid trust for such spouse subject to election.

6 Election to take intestate share not in excess of \$5,000 outright. The amount is somewhat in excess of \$2,500 to which the surviving spouse is entitled under section 18 of the New York Decedent Estate Law. We believe that in most instances the surviving spouse will be better protected in receiving up to \$5,000 outright. If the intestate share is less than \$5,000 the surviving spouse is entitled to receive such sum outright. If the intestate share is more than \$5,000 and a trust is created for the wife for life, the wife is given a limited right to withdraw from the trust fund the difference between \$5,000 and the total value of outright legacies, devises and any undisposed of property. (3A 4-1(b)(2)).

7 Intestate share limited to one-half. Under the statute of distribution the intestate share may equal the entire estate. For the purpose of this chapter, however, the share which the surviving spouse may elect to take against the will may not exceed one-half, leaving the decedent free to dispose of the remaining one-half as he chooses. Of course, where the decedent is survived by a spouse and children, the intestate share to which such surviving spouse is entitled to get under this chapter could not exceed one-third under existing law (one-half under proposed law).

8 Illusory transfers inter vivos. The statute does not deal with inter vivos transfers by decedent during life, but only with property owned by decedent at death. However, the courts in several cases in New York have extended the right of election to illusory transfers when they found that such decedent was in substance, though not perhaps in form, the real owner of property at the date of death and that the illusory transfer was made to defeat the right of election. *Newman v Dore*, 275 N Y 371, 9 N E 2d 966, 112 A L R 643, *Murray v Brooklyn Savings Bank*, 258 App Div 132, 15 N Y S 2d 915. The test is: Was the transfer real or illusory? The statute is not intended to extend a right of election to property transferred by decedent regardless of the motive even though the result may be to impair the right of election.

9 Insurance, pension and other death benefits. The right of election does not extend to any such benefits unless and to the extent that the property passes under the will for administration as a part of decedent's estate.

10 Chapter 4 of Title 3A can be adopted with or without abolishing dower and curtesy. If dower and curtesy are abolished, then 3 37-1 and 3 37-2 will have to be amended. Proposed amendments to those sections will be found under proposed additional legislation.

Chapter 7.

3A:7-6. Assets not exceeding \$500 and no surviving spouse; rights and liabilities of 1 next of kin with consent of others. Where the total value of the real and personal assets of the estate of an intestate will not exceed \$500, and the intestate leaves no surviving spouse, such 1 of the next of kin as shall have obtained the consent in writing of the remaining next of kin, if any, and shall have executed before the surrogate of the county where the intestate resided at his death, or, if then nonresident in this state, where any of the personal assets are located, or before the superior court or without the state before any person authorized to take qualifications of administrators, and affidavit setting forth the residence of the intestate at his death, and the names, residences and relationships of all the next of kin and specifying the nature, location and value of the real and personal assets and that the value of the intestate's real and personal property will not exceed \$500, shall be entitled to receive the personal assets of the intestate for the use and benefit of all the next of kin and creditors without administration or entering into a bond, thereupon he shall have all the rights, powers and duties of an administrator duly appointed for the estate and, as such, may be sued and required to account as if he had been appointed administrator by the surrogate or the superior court, as the case may be. The consent shall be filed, and the affidavit filed and recorded, in the office of the surrogate stated or, if the proceeding is before the superior court, then in the office of the clerk of that court.

Source C 3 7-8 1

Note of Reporter. The present statute (3 7-8 1, L 1941, c 382, §1) allows the next of kin to administer an estate without taking out letters, only where the total value of the real and personal assets of an intestate are \$100 or less. It has been urged by one of the large surrogate's offices that this statute should be amended so as to apply whenever the estate is \$500 or less. The statute (3A 7-5), which entitles a spouse to assets without administration, applies where the real and personal assets will not exceed \$500 and the statute (3A 7-30), which renders letters of guardianship unnecessary, applies whenever the minor has real estate not exceeding \$100 and personal estate not exceeding \$500.

3A:7-14. Temporary administration in county court. The county court of each county may grant temporary administration, administration pendente lite, administration ad litem without bond or any form of limited administration.

Note of Reporter. R S 3 7-36 should be repealed. There appears to be no modern need for R S 3 7-36. No cases have arisen under it. Rule 3 91 and L 1948, c 388 apply cover situation.

Chapter 15. Compromise of Claims.

- 3A 15-1 Compromise of claims, and approval of the court thereto
- 3A 15-2 Claims which may be compromised
- 3A 15-3 Agreement of compromise
- 3A 15-4 Effect of judgment approving compromise

3A:15-1. Compromise of claims, and approval of the court thereto. A fiduciary, in the exercise of good faith and a reasonable discretion, may compromise any claim stated in section 3A 15-2 of this title; or he may submit the compromise, for approval, to the court issuing him his letters or authority, unless they are issued by the surrogate of any county, in which case he may submit the same to the county court of the county. If the court is satisfied that the compromise submitted to it is for the interest of all persons interested, it shall approve the same.

For the purposes of this chapter a fiduciary shall be taken to include an administrator pendente lite, an administrator ad prosequendum or any other fiduciary of limited authority.

Note of Reporter Sections 3A 15-1 to 3A 15-4 change in form, but not in substance, the existing law, except insofar as they permit a guardian to compromise a claim.

R S 3 15-1 to 3 15-8 are unsatisfactorily expressed in a number of respects. For one thing R S 3 15-4, as amended, provides that in order to effect any compromise of any claim, the fiduciary must apply to the court for authority.

Sections 3A 15-1 to 3A 15-4 should be read in conjunction with the new proposed Rule 3 99A.

3A:15-2. Claims which may be compromised. The court may approve the compromise of any claim whether litigated or not, heretofore or hereafter arising, whether the claim is made by a legatee, devisee, caveator, widow, creditor, minor or mental incompetent through his guardian or any other claimant whatsoever, against the estate of the fiduciary's decedent, the trust created by the decedent's will or any guardianship, or by the estate, trust or guardianship against any person, and whether the claim concerns

- a. The probate of any writing purporting to be the decedent's will,
- b. The construction, validity or effect of any will of the decedent or any such writing,
- c. The rights or interests in the estate of the decedent of any person, whether claiming under a will or as heir, next of kin or spouse,
- d. The rights or interests of any beneficiary of any trust created by the decedent's will, or the rights or interests of any ward,
- e. The administration of the estate of any decedent, any trust created by his will or any guardianship,
- f. Any demand owing to or by the estate, trust or ward, or
- g. Any other matter relative to the estate or trust or the death of the decedent, or the guardianship or ward.

Note of Reporter Subparagraphs "a" to "e" are taken in part from section 93 of the Model Probate Code.

3A:15-3. Agreement of compromise. All the

terms and conditions of the compromise submitted to the court for its approval shall be set forth in a writing signed, subject to the approval of the court, by the fiduciary and the claimant or debtor or the general guardian of a minor or mental incompetent.

3A:15-4. Effect of judgment approving compromise. Upon the entry of a judgment approving the compromise, any fiduciary who is a party plaintiff or defendant to the action shall be relieved of any responsibility in the premises, provided the persons in interest, including all persons interested through the fiduciary, have been made parties to the action.

3A:26-1. Legacies; when payable; interest. An executor or administrator with the will annexed of any will probated on or after the effective date hereof shall have 24 months after probate within which to pay and satisfy legacies given by the will unless the will otherwise directs; provided, however, that legacies given by the will may be paid or satisfied prior to the expiration of said 24 months' period unless the will otherwise directs.

Any legatee under a will probated on or after the effective date hereof, who becomes entitled to interest on a legacy, shall be paid interest at the rate fixed by the will, or, if no rate is so fixed, at the rate of 3 percent per annum, to be computed from the date fixed by the will, or, if no date is so fixed, from the date of payment fixed by the will, or, if not date for computing interest or payment of the legacy is fixed by the will, from and after 24 months after the probate of the will.

2 This act shall take effect immediately.

3A:26-2. Distribution by order of court. When an executor, administrator with the will annexed, substituted administrator with the will annexed, testamentary trustee or substituted testamentary trustee has filed an account showing the balance of the estate in his hands at the date of the account and the account has been allowed by judgment of the court in which he has accounted, the court may, upon application of the fiduciary or a party in interest and such notice to all persons concerned as the court may, by rule or otherwise, direct, order and make just distribution in accordance with the directions and provisions of the will, of what shall remain after all debts and expenses and other charges have been allowed and deducted.

2 This act shall take effect immediately.

3:97- . Where an account of a fiduciary under a will has been settled, the fiduciary or a party in interest may apply to the court wherein the account was settled in a summary manner on notice or on order to show cause for directions as to the distribution of the estate. If such an application is made, notice thereof shall be given to all persons concerned as the court may order.

3A:26-16.1. It is proposed that a new section, tentatively numbered for identification as 3 26-16.1, be added to the sections on unclaimed legacies. The proposal reads as follows:

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Whenever any moneys have been paid into court under this article, under circumstances which would have justified or permitted the establishment of an absentee trust under chapter 41 of this title, the court shall treat such funds paid in, in every respect as though such an absentee trust had in fact been sought and established.

Note of Reporter This addition to article 3 of chapter 26 is intended to harmonize and round out the statutory treatment of property which an absentee owns or is entitled to receive. Chapter 41, under the amendments proposed in this revision, permits conservatorship and essential distribution under court supervision of any property or money in which an absentee has right, title or interest.

3A:27-6. Administrator of veterans affairs as party in interest. The administrator of veterans affairs shall be deemed a party in interest to any action for the appointment, removal or discharge of a guardian, or any action by or against a guardian, affecting in any manner the administration, accounting, distribution or other proceeding with respect to the estate of any present or former ward which includes assets derived in whole or in part from benefits.

Note of Reporter The above provision is requested by the veterans administration, which acted as a reporter for chapters 27 to 33A of Title 3. Further see Rule 5 3-9(h).

3A:32-1. Commitment to veterans administration. Where person has been committed under laws of this state. Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration or other agency of the United States government, the court or other committing authority, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration or other agency.

The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this act shall affect his right to appear and be heard in the proceedings.

Upon commitment, such person, when admitted to any facility operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans administration or other agency. The chief officer of any facility of the veterans administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be

vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole or discharge.

Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this act are so conditioned.

3A:32-2. Where person has been committed by court of another state. The judgment or order of commitment by a court of competent jurisdiction or other committing authority of another state or of the District of Columbia, committing a person to the veterans administration, or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or other committing authority making the order, and the courts or other committing authority of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint, as is provided in section 3A 32-1 with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any facility of the veterans administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

3A:32-3. Transfer of persons heretofore committed. Upon receipt of a certificate of the veterans administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or authority or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer, the court or other authority originally committing such person shall enter an order for

such transfer after appropriate motion and hearing

Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States pursuant to the original commitment

3A:37-1. When the parties intermarried prior to January 1, 1952, the widow, whether alien or not, of a person dying intestate or otherwise, shall be endowed, for the term of her natural life, of the one full and equal half part of all real estate whereof her husband, or another to his use, was, prior to January 1, 1952, seized of an estate of inheritance at any time during coverture, to which she shall not have relinquished or released her right of dower by deed duly executed and acknowledged in the manner provided by law for deeds to be recorded, and, except as hereinbefore provided, no inchoate right of dower shall be possessed by a wife during coverture, and no widow shall be endowed in any lands whereof her husband, or another to his use, became seized of an estate of inheritance, after December 31, 1951

3A:37-2. When the parties intermarried prior to January 1, 1952, the widower, whether alien or not, of a person dying intestate or otherwise, shall be endowed, for the term of his natural life, of the one full and equal half part of all real estate whereof his wife, or another to her use, was, prior to January 1, 1952, seized of an estate of inheritance at any time during coverture, whether issue be born or not, to which he shall not have relinquished or released his right of curtesy by deed duly executed and acknowledged in the manner provided by law for deeds to be recorded, which shall be known as curtesy and which right of curtesy shall be enforced, admeasured and determined in the same manner and according to the same procedure and subject to the same limitations and restrictions as is provided by law in case of dower, and, except as hereinbefore provided, no inchoate right of curtesy shall be possessed by a husband during coverture, and no widower shall be endowed in any lands whereof his wife, or another to her use, became seized of an estate of inheritance, after December 31, 1951

Note of Reporter The provisions of chapter 4 of Title 3A (see proposed additional legislation), under which a spouse has the privilege of electing to take an intestacy share notwithstanding the will, can be adopted without abolishing dower and curtesy. However, it is suggested that if the widow is given such an election, dower and curtesy should be abolished as indicated in the proposed amendments to sections 3 37-1 and 3 37-2 as to all persons marrying on or after January 1, 1952

3A 41-1 Trustee, appointment, general powers and duties

3A 41-2 Absence of beneficiary or distributee

3A 41-3 Distribution or restoration of estate

3A 41-4 War absentee, definition

3A 41-5 War absentee, distribution or restoration of estate

3A:41-1. Trustee; appointment; general powers and duties. Upon the filing of a verified complaint with the superior court or probate division of the county court of the county in which the absentee last resided or in which the property or any part of it may be situate, by the husband, wife or next of kin, of a person who has property situate within this state, and who has absented himself from his usual place of abode for the space of 1 year, and whose whereabouts is not and has not been known for a period of 1 year, or of a war absentee as hereinafter defined for the purpose of this chapter, or by any other person who may interest himself, the court may appoint 1 or more trustees to take charge of and manage the estate of the absent person. The trustee or trustees so appointed shall, within 30 days after appointment, file with the court an inventory of the estate, and such trustee or trustees shall render an account at least once in 3 years, or more often if required by the court. Such trustee shall be under the direction and control of the court appointing him and shall have full power over the estate and may, upon application to the court, initiate such proceedings for the conservation, protection or disposal of the estate, or any part thereof, as the court may deem proper

3A:41-2. Absence of beneficiary or distributee. Whenever a person entitled to any intermediate or final distribution, whether of income or of principal, out of any decedent's estate or any trust fund, shall at the time for distribution have absented himself from his usual place of abode for the space of 1 year and whose whereabouts is not and has not been known for a period of 1 year, the fiduciary shall hold the absentee's share, and the court which is exercising supervisory jurisdiction over the fiduciary's administration shall treat and regard the absentee's share, as though it were a trust created under section 1 of this chapter, except in so far as such treatment would be inconsistent with the provisions of any will or trust instrument under which the absentee's right to that share arose, provided, however, that no fiduciary acting under this section shall be required to file the inventory provided for in section 1 of this chapter, or to account except as in the normal course of his administration

3A:41-3. Distribution or restoration of estate. Distribution of the estate in the case of any absentee other than a war absentee may be made under direction of the court after 7 years from the date of the absentee's disappearance, or sooner if the death of the absent person is established by evidence satisfactory to the court, but if the absent person returns before such distribution the trustee shall render an account and restore to him the estate, after deduction of the reasonable expenses of the trust and compensation of the trustees.

3A:41-4. War absentee; definition. A war

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absentee shall be and hereby is defined as any person who, while engaged in legitimate activities, becomes and is officially reported as missing as a result of war, or interned, or beleaguered, besieged or captured by an enemy. A person may be a war absentee notwithstanding the fact that he is missing or detained by reason of a war in which the United States is not a participant.

3A:41-5. War absentee; distribution or restoration of estate. The trustee shall render an account and restore the estate, after deduction of the reasonable expenses of the trust and compensation of the trustees, to the war absentee upon his return, or to any person exhibiting a sufficient power of attorney signed by the absentee, or to the conservator of the property of a nonresident war absentee appointed or acting under the laws of the nonresident's domicile, or to any person who shall prove a right to control, possession or ownership of the said property by reason of the death of the war absentee. The court may order a distribution under its direction, as though the trust were governed by section 3 of this chapter, whenever presumptive proof of death shall be presented.

Source R S 3 41-1 through 4 and C 3 42A-1 through 3.
Note of Reporter The proposed chapter 41 attempts to unify and simplify the law governing conservation of the property of absentees who have not been missing long enough to be presumed dead. Formerly, chapter 41 dealt only with conserving the property of an absentee who had disappeared. Using that chapter as a framework, the reporters have provided similar treatment for the property of absentees missing or interned because of war, and for property accruing, under wills, trusts, and decedent estate law, to absentees of every sort.

Article 1 Presumption of Death

- 3A 42-1 Death presumed after 7 years' absence of resident or nonresident
3A 42-2 Restoration and recovery of property upon reappearance of absentee
3A 42-3 Protection of executor, administrator or trustee making distribution
3A 42-3 (alternative) Protection of executor, administrator or trustee making distribution

Article 2 Sale or Other Disposition of Real Estate

- 3A 42-4 Transaction as to real estate in which an absentee owns an interest, title
3A 42-5 Absentee later proved alive entitled to proceeds of such transaction

Article 3 Administration of Estate and Distribution of Personal Property

- 3A 42-6 Administration of estate and distribution of property
3A 42-7 Absentee later proved alive entitled to recover property still in hands of fiduciary
3A 42-8 Absentee later proved alive entitled to recover as to distributed property
3A 42-9 Insurer or beneficiary entitled to recover where assured later proved alive

Article 4 Judgment of Declaration of Death

- 3A 42-10 Procedure
3A 42-11 Setting the judgment aside

Article 1 PRESUMPTION OF DEATH

3A:42-1. Death presumed after 7 years' absence of resident or nonresident. If a resident or nonresident of this state absents himself from

the place of his last known residence, or conceals himself, for 7 years successively, so that on diligent inquiry it cannot be ascertained that he was alive during the 7 years, he shall, whenever his death comes into question, be presumed to be dead, unless it is later proved he was alive within that time.

3A:42-2. Restoration and recovery of property upon reappearance of absentee. If an estate has been received, recovered or taken into possession by any person by reason of the presumption of death and in any action or proceeding it is thereafter proved that the person presumed dead was alive at the time of such receipt, recovery or taking into possession, such estate shall, except as otherwise provided by law, be restored to the person deprived thereof by reason of the presumption, or to his heirs, executors, administrators or assigns, and he or they may also demand and recover the rents and profits of the estate during the time he was or they were deprived thereof, with costs of action.

3A:42-3. Protection of executor, administrator or trustee making distribution. An executor, administrator or trustee who pays over a legacy or distributive share to which a person presumed dead by virtue of this chapter would, if living, be entitled, shall be fully discharged from any and all liability to the person so presumed dead, and to his executors, administrators and assigns, upon filing with the surrogate of the proper county the releases of the persons who would be entitled to such legacy or distributive share if the person so presumed to be dead were actually dead, together with their refunding bonds drawn according to R S 3 26-20, but with the further condition that the legacy or distributive share will be refunded in the event that such refunding should be required under the provisions of this chapter.

3A:42-3. (alternative) Protection of executor, administrator or trustee making distribution. An executor, administrator or trustee who pays over a legacy or distributive share to which a person presumed dead by virtue of this chapter would, if living, be entitled, shall be fully discharged from any and all liability to the person so presumed dead, and to his executors, administrators and assigns, upon filing with the surrogate of the proper county the releases of the persons who would be entitled to such legacy or distributive share if the person so presumed to be dead were actually dead, together with their refunding bonds in the amount or value of the money or property so distributed, without sureties and upon the condition that the money or property so distributed will be refunded in the event that such refunding should be required under the provisions of this chapter.

Note of Reporter It is recommended by the reporters that R S 3 26-19 et seq be amended to provide for releases and refunding bonds, not only upon distribution by an executor or administrator, but upon distribution by any fiduciary of the funds under

Title 3A. ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS

his control. The first alternative draft for the proposed R S 3A 42-3 was written on the assumption that such amendment would be made. The second alternative draft is intended to be used only if such amendment of the refunding bond provision is not made. This second alternative draft would specifically provide for a refunding bond upon distribution by a trustee of the share of an absentee presumed dead.

Article 2 SALE OR OTHER DISPOSITION OF REAL ESTATE

3A:42-4. Transaction as to real estate in which an absentee owns an interest; title. If an absentee, a resident or nonresident of New Jersey, shall be, by virtue of this chapter, declared dead by any court of competent jurisdiction in New Jersey; and if

a any real estate in which such absentee had or shall have any interest, divided or not, or contingent or not, as owner, tenant by the entirety, lessee, spouse of an owner, or otherwise, or

b. the interest in such real estate of such absentee has been or shall be sold, conveyed, mortgaged, assigned, leased, or devised, as though such person were actually dead, then such absentee shall be thereafter forever barred from any claim of title to the real estate or interest therein and the recipient taking such real estate or interest therein in any such transaction, and his heirs, assigns and successors in title, shall have as perfect a right or title therein and thereto, and shall hold the same, as though such absentee had actually died on the date of the filing of the complaint in the action in which the absentee is so declared dead.

3A:42-5. Absentee later proved alive entitled to proceeds of such transaction. If an absentee should later be proved to have been alive at the time of a transaction referred to in section 4 of this chapter, then he or his heirs or assigns shall be entitled to the rents, purchase price, or other proceeds of such transaction

a which are still in the hands of a fiduciary appointed with respect to the estate or property, or any part thereof, of such absentee, after deducting from such proceeds the expenses and compensation of such fiduciary, or

b which have come into the hands of any person as an heir, or a devisee, legatee, spouse, or next-of-kin of such absentee, or as the owner of an interest all or part of which was contingent upon the death of the absentee,

provided, however, that when the proceeds so owed by any person have been paid to the absentee or his heirs or assigns, then any costs or obligation incurred by such person in such transaction and attributable to the interest of the absentee shall be assumed by the absentee or his heirs or assigns, and the person so paying shall be free of such obligation unless it was or shall be otherwise specifically provided in such transaction; and

provided further that the absentee or his heirs

or assigns shall be entitled to received only what he or they would have received for the portion of the proceeds of such transaction represented by the interest of the absentee at the time of the transaction, without interest, and

provided further that an action may be maintained to recover such proceeds, but such action must be started within 10 years of the date of the judgment declaring the absentee dead.

Article 3 ADMINISTRATION OF ESTATE AND DISTRIBUTION OF PERSONAL PROPERTY

3A:42-6. Administration of estate and distribution of property. If an absentee, a resident or nonresident of New Jersey, shall be, by virtue of this chapter, declared dead by any court of competent jurisdiction in New Jersey, the judgment declaring such absentee dead shall be the equivalent of a legally valid certificate that such absentee died on the date of the filing of the complaint in such action. As though he had died on that date his will may be probated, fiduciaries may be appointed for his estate, his estate may be administered, guardians may be appointed, insurance benefits may be paid, and estates or interests in other property which were dependent upon his death may be treated as though he had died on such date.

3A:42-7. Absentee later proved alive entitled to recover property still in hands of fiduciary. If an absentee should later be proved to have been alive at the time of the appointment under the provisions of this chapter of an executor, administrator or other fiduciary appointed to administer the property or estate, or any part thereof, of the absentee, then the absentee, or his executors, administrators or assigns, shall be entitled to receive from such fiduciary any such property or estate, or the proceeds thereof, received by such fiduciary, after deducting the reasonable expenses and compensation of the fiduciary, and after deducting the amounts of any distributions except those for which an executor, administrator or trustee has not taken releases and refunding bonds according to section 3 of this chapter, and the fiduciary shall render an accounting of his administration to the absentee or persons entitled to receive such property, estate or proceeds.

3A:42-8. Absentee later proved alive entitled to recover as to distributed property. If an absentee should later be proved to have been alive at the date of filing of the complaint in an action resulting in a judgment of declaration of death under this chapter, and if any fiduciary, appointed to administer any property or estate of the absentee or any property or estate in which rights were dependent upon the death of the absentee, has made any distribution of such property or estate, or the proceeds thereof, then such absentee, or his executors, administrators or assigns, shall be entitled to the reasonable

PROPOSED ADDITIONAL LEGISLATION

value, determined as of the time of distribution, of such property distributed in kind, or to the proceeds of such property or estate where proceeds were distributed. An action may be brought for the recovery of such reasonable value or of such proceeds, without interest, against such distributee or his estate, but such action must be started within 10 years of the date of the judgment declaring the absentee dead. The absentee or his executors, administrators or assigns, shall be entitled to receive only what he or they would have received for the portion of the reasonable value or proceeds represented by the interest of the absentee at the time of the distribution.

3A:42-9. Insurer or beneficiary entitled to recover where assured later proved alive. If an absentee should later be proved to have been alive at the time of payment of any insurance benefit which was due only after the death of the absentee, then such payment may be recovered by the payor, its successors or assigns; or by anyone designated as beneficiary after such payment, or his executors, administrators or assigns. An action may be brought for the recovery of such payment, without interest, against the payee or his estate,^c but such action must be started within 6 years from the date of payment. If brought by the insurer, or its successors or assigns, the plaintiff must prove that the absentee is alive at the time of filing the complaint or that the absentee made a designation entitling someone other than the payee to payment of all or part of the benefit. If brought by a later designated beneficiary, or his executors, administrators or assigns, the plaintiff must prove that the absentee is dead at the time of filing the complaint in the action to recover such payment. In any case, only that part of the payment to which the payee was not entitled can be recovered.

Any insurer making a payment under the provisions of section 6 of this chapter shall be held harmless as to any claimant for so doing, except to the extent that it or its successors or assigns may make a recovery under this section.

Article 4 JUDGMENT OF DECLARATION OF DEATH

3A:42-10. Procedure. Any interested party may bring an action in the superior court, or in the probate division of the county court of the county of the absentee's last known residence or of the location of any property in which the absentee owned an interest, for a judgment to declare an absentee dead by virtue of this chapter. The complaint must set forth facts to show the plaintiff's interest. Necessary parties to the proceeding shall include

a if the absentee left a will known to plaintiff, the executor and any person who would have an interest under the terms of the will in any property, real or personal, in which the absentee,

at the time of the filing of the complaint, owned an interest known to plaintiff, and

b whether or not the absentee left a will known to plaintiff, the persons who would have an interest as heir, next-of-kin, or spouse of the absentee in the event that the absentee died intestate on the date of filing the complaint, in any real or personal property known to plaintiff in which the absentee then had an interest; and

c the carrier and beneficiaries of any insurance known to plaintiff which is payable on the death of the absentee; and

d the owners, in a fiduciary or beneficial capacity, of any interest known to plaintiff in any property, real or personal, which interest expires or is contingent upon the death of the absentee.

Whether or not answer is filed, the court shall hear the matter and shall not enter judgment declaring the absentee dead until it is satisfied that the plaintiff has made reasonable effort to ascertain the facts which should be set forth in the action or until it is satisfied that the absentee should be presumed dead under the provisions of section 1 of this chapter.

3A:42-11. Setting the judgment aside. If an absentee adjudged dead under the provisions of section 10 of this chapter should later appear before and establish his identity to the court in which such absentee was so adjudged dead, the court shall direct the giving of such notice, if

If any person shall come by proof that the absentee was alive at the time of the filing of the complaint which resulted in such judgment, such person may, on motion, request the court entering such judgment to set it aside. The court shall direct the giving of such notice, if any, as to it shall seem proper. It shall then hear the matter, and if it shall determine that the absentee was alive at such time it shall set the judgment aside.

The setting aside of such a judgment shall not affect any action taken or any rights lost or acquired prior to the setting aside thereof, but thereafter the judgment shall be of no force or effect.

Source R S 3 42-1 through 18 and R S 3 43-1 through 23

Note of Reporter The proposed chapter 42 attempts to unify and simplify the law governing the treatment of property in which an absentee presumed dead has an interest. It re-states the elements giving rise to the presumption of death, and it sets up a procedure for a judicial determination of death which will apply whenever the question of such death arises in connection with the treatment of such property. It does not, however, abolish other procedures for determining death in particular actions, such as those provided in R S. 2 71-37 through 39 and R S 2 71-73.

3:42A-1 to 3. It is recommended that chapter 42A of Title 3 be repealed.

Note of Reporter The reporter is of the opinion that the action provided for in chapter 42A is in all essential respects identical with the action provided for in chapter 41 of Title 3 (action to appoint trustee for property of person whose whereabouts are unknown). Therefore the reporters appointed for these 2 chapters have collaborated to integrate them into

Title 9 CHILDREN—JUVENILE AND DOMESTIC RELATIONS COURT

the proposed chapter 41. The essential elements of R S 3 42A-1, defining a war absentee and of R S 3 42A-3, providing for transfer of the war absentee's property to himself, his executors or administrators or to any person holding a power of attorney from the absentee, have been specifically set out in chapter 41 and the reader is referred to the text and commentaries of that chapter.

3:43-1 to 23. It is recommended that chapter 43 of Title 3 be repealed.

Note of Reporter. The bulk of this chapter is concerned with purely procedural matters and therefore not appropriate for statutory treatment. The substantive portions of the chapter provide for distribution of interests and shares under testamentary trusts

when a designated beneficiary has for 14 years been absent and not locatable. The reporter sees no reason, either upon the face of the statute or in sound policy, to treat the absence of a beneficiary under a testamentary trust any differently from the unexplained absence of any other person. It is the reporter's view that chapter 43 unnecessarily provides special treatment for a single type of presumptive-death case. Therefore, the reporter for chapter 43 has collaborated with the reporter for chapter 42 in preparing an integrated draft of a proposed statute giving uniform treatment to every situation in which the ownership or right to property is dependent upon the death of an absentee. The reader is referred to the draft and Note of Reporter of the proposed R S 3A 42-1 et seq.

Title 9. CHILDREN—JUVENILE AND DOMESTIC RELATIONS COURT.

Article 5 MUNICIPAL JUVENILE ADJUSTMENT COMMITTEE

Note of Reporter. If proposed new legislation 9 18-35 to 41 is enacted, then present section 9 22-11 and 9 22-12, which are not affected by the proposed new legislation should follow immediately after 9 22-7 and be given consecutive section numbers 9 22-8 and 9 22-9.

9:18-35. Appointment of committee. Any municipal governing body may recommend a panel of representative citizens to the juvenile court, which shall select therefrom 6 persons who, together with the referee appointed by the court, shall constitute a committee to hear juvenile delinquency matters. Such appointees shall serve for staggered 3-year terms. The referee shall be chairman of the committee, and the committee shall have power to appoint a secretary. The committee shall keep complete minutes of its hearings and proceedings.

9:18-36. Adjoining municipalities may create committee; first offenders dealt with. Adjoining municipalities may enter into a joint arrangement for the creation of such a committee. The committee shall deal with first offenders only, unless the court specially refers a second or subsequent offender to it.

9:18-37. Jurisdiction of committee. With the consent of all parties concerned, the committee may hear any case coming within the provisions of 9 18-11 (d, e, f, i, j, k and l) and any other juvenile delinquency case specially referred to it by the juvenile court judge, arising within the limits of the municipality. The committee shall have power to subpoena witnesses. Any case requiring the detention of a child shall be referred to the juvenile and domestic relations court.

9:18-38. Facilities available to committee. The juvenile court shall, if it deems the request of the committee reasonable, make available to it the facilities of the county probation office, county social work agencies, and such other facilities

as will aid it in effecting a thorough consideration and proper disposition of the cases coming before it.

9:18-39. Facilities for meetings. The municipalities shall provide proper facilities for meetings of the committee, by designating space in a building other than the one in which the municipal court meets, for the holding of hearings.

9:18-40. Report of committee. The committee shall meet and hear cases on the date fixed for hearing. It shall forthwith report its action to the juvenile court. If the action of the committee is not unanimous, the matter shall be returned to the juvenile court by the referee without any recommendation. If the committee is in agreement, its recommendation shall be subject to approval or disapproval by the court.

9:18-41. Rights retained. Any adjustment committee heretofore appointed pursuant to L 1947, c 179, p 821, §8 shall continue to enjoy the rights and advantages which they now enjoy and exercise by virtue thereof. Any municipal governing body shall have the right to reorganize any existing adjustment committee to bring it within the provisions of this article.

Note of Reporter. The committee on improving the administration of criminal justice, Hon Justice William A. Wachenfeld, chairman, presented a report at the judicial conference in Trenton, N. J., in September, 1950. That report included a study of the juvenile delinquency problem.

After considering what was commonly referred to as "The Monmouth County Plan" and reviewing the Youth Guidance Act, R S 9 22-1 et seq., the judicial conference committee recommended that sections 8 to 12 of the Municipal Youth Guidance Act (R S 9 22-8 to 12), which dealt with the adjustment committee, should be taken out of the act and, with recommended changes, be made part of the Juvenile and Domestic Relations Court Act (R S 9 18-12 et seq.). In this way, the committee said, the adjustment committee plan can be made part of the more inclusive scheme comprehended by the Juvenile and Domestic Relations Court Act and bring within its orbit the helpful participation of interested citizens sitting as members of local committees.

Title 46. PROPERTY.

An Act to Supplement Title 46 (Property) by Adding Thereto Chapter 11A, Proprietary Surveys.

1. Proprietary surveys as bar. Any survey, made of lands within either the eastern or western division of the proprietors of the state of New Jersey, and inspected and approved by the general proprietors, or council of proprietors of such division, and, by their order or direction, entered upon the record in the office of the secretary of state or in the surveyor general's office in such division, shall, from and after such record is made, preclude and forever bar such proprietors and their successors from any demand thereon, any plea of deficiency of right or otherwise notwithstanding

Note of Reporter The above is R S 2 25-4. However, it is recommended that this be removed from Title 2 and placed in Title 46 with reference to property

2. New surveys within reputed boundary of ancient surveys unrecorded or record of which lost; notice of intention to make. Because of the fact that many ancient surveys of land, fairly made, have not, by reason of the neglect of officers or because of some casualty, been put on record, or, if recorded, the record has been destroyed by fire or lost, by reason whereof, and because of the natural decay of marked lines and corners, the ancient metes and bounds cannot, except by testimony and reputation, be clearly ascertained, and it has been found, on running the lines of many of such surveys, that they include more land or extend farther than their strict length of chain, large measures having been formerly allowed, even by the proprietors, as an encouragement to locations, thus making it possible for persons other than the owners and possessors of the lands included in such surveys to take advantage of such owners and possessors (who, supposing their titles to be indefeasible, have not resurveyed, covered and secured the lands included in their surveys), by confining their holdings to the net length of chain, thereby making vacancies of valuable improved parts, upon some of which buildings have been erected, and such persons, on causing surveys to be made of such overplus, have procured or may procure such overplus surveys to pass the council of proprietors, without legal preference or due notice to the owners and possessors of the lands covered by the ancient surveys, no such newly-made partial survey, lying within the council of proprietors, or which may be returned to the council, or made on any lands, improved or unimproved, within what has been usually taken and deemed to be the ancient reputed boundary of such lands, shall be recorded

or be of any avail to any person so surveying, unless it shall be made to appear, by the testimony of at least 2 good and sufficient witnesses, that the possessor, holding such lands by survey, deed or otherwise, has been duly notified, at least 6 months previous to the making of such survey, of the intention to make the same, and has refused or neglected to resurvey and cover such overplus lands

Source R S 2 25-5

3. Perfection of title to overplus land by claimant under ancient survey. If the council of proprietors shall refuse or neglect to give preference to any prior survey, legally made, or to the possessor of any tract of land, enabling him to cover with rights, and secure the overplus lands which may be found within his ancient bounds, on his making a resurvey of his lands within 6 months after the notice given to him as required by section 2 25-5 of this title, such possessor, or any person legally authorized on his behalf, may cause a resurvey to be made, agreeably to the ancient reputed lines and boundaries, either by a deputy surveyor or by a person who understands the art of surveying, and appropriate so many rights thereon as will be sufficient to include the overplus

When the surveyor or person making the survey herein provided for shall have satisfied a justice of the peace of the county wherein the affected lands are situate that the survey so made by him is just, according to the best of his knowledge, such survey may be produced to the clerk of the county or counties wherein such lands are situate, who shall on the receipt thereof, record the same in the book directed to be kept in the respective counties by the act entitled "An act for the limitation of suits at law respecting titles to land", passed at Burlington the fifth day of June, 1787 Thereupon the survey, so made and recorded, shall give to the owner and possessor of the lands covered thereby an absolute title in fee

Source R S 2 25-6

4. Record of surveys as bar to acquisition of rights by new surveys. Nothing contained in either section 2 or section 3 of this title shall be construed or taken to authorize any person to make any survey within the certain or reputed bounds of any survey or resurvey made and entered on record pursuant to the provisions of the act mentioned in said section 3, any oarge or overplus measure therein contained, notice given as required by said section 2, deficiency of rights or other plea to the contrary notwithstanding

Source R S 2 25-7

Title 52. STATE GOVERNMENT, DEPARTMENTS AND OFFICERS.

Proposed Supplement to Title 52 Transferring to that Title the Provisions of R. S. 2:28 having to do with the Trial of Impeachments.

- 1 Expenses of trial, how and by whom paid
- 2 Fund for payment of expenses
- 3 Witness fees and mileage
- 4 Board and maintenance of indigent witnesses
- 5 Board, maintenance, fees and mileage of witnesses

Note of Reporter. The judicial article (article VI, section I) of the 1947 constitution, in stating the names of the courts, does not include the court for trial of impeachments, which appeared in the 1844 constitution as one of the courts. The legislative power is continued in article VI, section III of the 1947 constitution, but the senate when trying an impeachment should no longer be denominated a court. The only changes made in this chapter have been to eliminate the word "court" and also to eliminate the comptroller (whose function has been materially altered under the Reorganization Acts See C 52 18A-7), and to make appropriate changes in the text in accordance with these changes in the law.

1. Expenses of trial; how and by whom paid.

The expenses incurred by the senate upon the trial of an impeachment or incurred under the direction of the senate by any officer thereof in preparation for or in connection with the trial or by the managers appointed by the general assembly to conduct the trial of such impeachment, the fees and expenses of witnesses for the state, the compensation of the stenographer of the senate, and all other costs and expenses on behalf of the state, properly incurred in the preparation for, management or conduct of the trial, shall be paid by the state treasurer to the persons entitled thereto, upon the presentation of proper vouchers therefor approved by the president of the senate

Source. R S 2 28-1

2. Fund for payment of expenses. For the purpose of providing funds for the payment of the expenses enumerated in section 1 of this act, the treasurer shall, upon the order of the president of the senate, pay the sergeant at arms

of the senate or other officer designated by the senate to serve process, or pay the chairman of the board of managers appointed by the general assembly, such sum, not exceeding \$300 at one time, as will suffice to meet such expenses, and such officer shall, at the end of the trial, account to the treasurer for his disbursements from the fund so provided, forthwith pay into the state treasury any unexpended balance thereof and file with the treasurer vouchers for the money disbursed by him or under his direction
Source R S 2 28-2

3. Witness fees and mileage. Every person summoned to attend the trial as a witness shall receive, from the party in whose behalf he is summoned, \$100 for each day's attendance and mileage at the rate of 6 cents for each mile required to be traveled in going from and returning to his residence by the most usual route of travel between Trenton and the place of residence

No witness shall be required to attend upon the trial until 1 day's fee and mileage for 1 way is paid or tendered

Source R S 2 28-3

4. Board and maintenance of indigent witnesses. The senate may order the board and maintenance of any indigent person summoned as a witness on any trial, while in attendance upon the trial, to be paid by the sergeant at arms or other officer charged with the service of process, out of the money of the state in his hands, in the same manner as witnesses' fees are paid

Source R S 2 28-4

5. Board, maintenance, fees and mileage of witnesses. All bills for the board and maintenance of indigent witnesses, and all payments to witnesses of fees and mileage, except those required to be made in advance, shall be paid only on the certificate of the clerk of the senate that the same are correct

Source R S 2 28-5

ACTS SAVED FROM REPEAL

AN ACT concerning the exemplification of the records in judicial proceedings of certain former courts of this state

2A:16-58(1). The records and judicial proceedings of the following courts and judicial officers shall, on and after September 15, 1948, be exemplified as in this act provided L. 1948, c. 372, p. 1522, §1

2A:16-58(2). All records and judicial proceedings filed and taken in the former court of errors and appeals shall be authenticated and proved by the attestation of the clerk of the supreme court and the seal of that court, together with a certificate of the chief justice of the supreme court that said attestation is in due form

2A:16-58(3). All records and judicial proceedings filed and taken in the former supreme court, the former court of chancery or the former prerogative court shall be authenticated and proved by the attestation of the clerk of the superior court and the seal of that court, together with a certificate of a judge of that court that said attestation is in due form L. 1948, c. 372,

2A:16-58(4). All records and judicial proceedings filed and taken in the circuit court of any county shall be authenticated and proved by the attestation of the county clerk of the county and his seal, if such records and proceedings shall be in his possession and, if they shall not, they shall be authenticated and proved by the attestation of the clerk of the superior court and the seal of said court, together with a certificate of a judge of the superior court, in either case, that said attestation is in due form

2A:16-58(5). All records and judicial proceedings filed and taken in the former court of common pleas, the former court of oyer and terminer, the former court of quarter sessions and the former court of special sessions of any county shall be authenticated and proved by the attestation of the county clerk of the county and his seal, together with a certificate of a judge of the county court of the county that said attestation is in due form

2A:16-58(6). All records and judicial proceedings filed and taken in the former orphans' court of any county shall be authenticated and proved by the attestation of the surrogate of the county and his seal, together with a certificate of a judge of the county court of the county that said attestation is in due form L. 1948, c. 372, p. 1523, §6.

2A:16-58(7). This act shall take effect September 15, 1948.

AN ACT providing for the disposition of all files, and the books, papers, records and documents and all property of the court of errors and appeals, the former supreme court, the prerogative court, the chancellor and the court of chancery, or in their custody (L. 1948, c. 331, p. 1316) approved August 30, 1948.

2A:16-60(1). Court of errors and appeals; disposition of books, records and documents. All files and the books, papers, records and documents and all property of the court of errors and appeals, or in its custody, shall be delivered to the clerk of the new supreme court
Source C 2 16-94

2A:16-60(2). Former supreme court; disposition of books, records and documents. All files and the books, papers, records and documents and all property of the former supreme court, or in its custody, shall be delivered to the clerk of the superior court, excepting the files, books, papers, records and documents concerning admission to the practice of law and the discipline of persons admitted, which shall be delivered to the clerk of the new supreme court
Source C 2 16-95

2A:16-60(3). Prerogative court; disposition of books, records and documents. All files and the books, papers, records and documents and all property of the prerogative court, or in its custody, shall be delivered to the clerk of the superior court
Source C 2 16-96

2A:16-60(4). Chancellor and court of chancery; disposition of books, records and documents. All files and the books, papers, records and documents and all property of the chancellor and the court of chancery, or in his, or its custody, except as is otherwise provided by law, shall be delivered to the clerk of the superior court
Source C 2 16-97

2A:16-60(5). Chief justice of supreme court to make orders and directions. The chief justice of the supreme court, as the administrative head of all the courts, may make such order and direction as he shall deem proper for the administration of this act, and in respect to the custody of the said files, books, papers, records, documents and property delivered to the clerk of the supreme court and the clerk of the superior court, respectively
Source C 2 16-98

2A:16-60(6). Specific laws to prevail. In the event of the enactment of any other act specifically disposing of any of the said files, books,

papers, records, documents and property, such specific disposition shall prevail

Source C 2 16-99

2A:16-60(7). Effective date. This act shall take effect September 15, 1948

Source C 2 16-100

AN ACT concerning the limitation of civil actions, and supplementing chapter 24 of Title 2 of the Revised Statutes (L 1938, c 200, p 477, §1) approved May 18, 1938

2A:24-29. Actions by state or municipal officers or employees whose compensation was reduced. Any person holding, or who has held, any office, position or employment under the government of this state, or any county, municipality, or school district thereof, whose compensation is, or has been paid by any such board of chosen freeholders, the governing body of any such municipality or school district, and such compensation was reduced by ordinance, resolution or motion, pursuant to any statute of this state, shall bring his or her said action for the recovery of such moneys alleged to be due by reason of such reduction within 6 months from the time of the passage of this act

Source C 2 24-25

AN ACT concerning the administration of justice and regulating the causes and proceedings pending in the courts upon the taking effect of the judicial article of the constitution and which are transferred to the courts established by said judicial article (L 1948, c 367, p 1500, c 2 16-70 to 2 16-86, approved September 10, 1948)

Preamble: Whereas, the judicial article of the constitution of 1947 takes effect on the 15th day of September, 1948, and

Whereas, paragraph 8 of section IV of article XI of the constitution transfers, when the said judicial article takes effect, causes and proceedings to the courts established by said judicial article; and

Whereas, the legislature is directed by paragraph 2 of section I of article XI of the constitution to enact all laws necessary to make the constitution fully effective, now, therefore,

2A:26-4(1). Definitions. As used in this act, the following terms shall have the following meaning "constitution" shall mean the constitution of 1947; "causes and proceedings" shall mean and include all actions, suits and special proceedings, statutory or otherwise, and controversies of a justiciable nature, whether constituting the whole or a part of any such action, suit or special proceeding, within the meaning of paragraph 8 of section IV of article XI of the constitution.

Source. C 2 16-70; L 1948, c. 367, p 1501, §1

2A:26-4(2). Purpose of act. The purpose of this act is to facilitate the transfer of causes and proceedings pending in the courts on September 15, 1948, according to the provisions of paragraph 8 of section IV of article XI of the constitution so as to obviate doubts, advance justice and expedite the further prosecution of said causes and proceedings, and to fully protect the rights and interests of the parties to such causes and proceedings.

Source C 2 16-71, L 1948, c 367, p 1501, §2

2A:26-4(3). Pleadings and papers in causes transferred under constitution; practice and procedure. On or after September 15th, 1948, all pleadings and other papers filed in any cause or proceedings transferred pursuant to the provisions of paragraph 8 of section IV of article XI of the constitution shall be entitled in the name of the court to which such cause or proceeding is transferred and such cause or proceeding shall be conducted as nearly as may be in accordance with the practice and procedure applicable to causes and proceedings of the same character in such court

Source C 2 16-72, L 1948, c 367, p 1501, §3

2A:26-4(4). Powers of court to which transferred; hearing. The court to which any such cause or proceeding is so transferred shall have power to hear and determine any issue or other matter arising or involved therein as fully and to the same effect, and shall have power to issue any writ, make any order, judgment or direction in respect thereto as the court from which the cause or proceeding was transferred could have done had the constitution not been adopted and shall have such additional powers in relation thereto as may be vested in it by the constitution to hear any additional controversies in connection therewith and to fully and finally determine and enforce the rights of the parties thereto according to the right and justice of the matter

Source C 2 16-73, L 1948, c 367, p 1502, §4

2A:26-4(5). Additional powers of court to which transferred. The court to which any such cause or proceeding is so transferred shall also have the power to issue any writ, make any order, judgment and direction, in respect thereto, which may be necessary to preserve the status quo, and fully and finally determine and enforce the rights of the parties thereto, according to the right and justice of the matter

Source C 2 16-74, L 1948, c 367, p 1502, §5

2A:26-4(6). Extensions of time; opening of defaults; relief afforded. Notwithstanding any former rule of court or contrary statutory provision, extensions of time may be granted, defaults may be opened, and relief afforded, to the parties to any such cause or proceeding, in respect thereto, unless a vested right intervenes

Source C 2 16-75, L 1948, c 367, p 1502, §6

2A:26-4(7). New trial and other relief in court to which transferred. In any cause or proceeding so transferred, notwithstanding that an adjudication has been entered therein, the court to which the same is transferred may order a new trial, grant a re-hearing, stay proceedings, recall a remittitur, allow a review, issue a scire facias, certify a return, and afford any relief, in similar manner and to the same effect as the court from which the cause or proceeding was transferred could have done had the new constitution not been adopted

Source C 2 16-76, L 1948, c 367, p 1502, §7

2A:26-4(8). Causes transferred to supreme court; powers of chief justice. In respect to any such cause or proceeding so transferred to the supreme court, the chief justice of that court shall have the power to grant any relief and make any order, certification or return that could have been made by the chancellor or former chief justice had the constitution not been adopted

Source C 2 16-77, L 1948, c 367, p 1503, §8

2A:26-4(9). Causes transferred to superior court; powers of judges. In respect to any such cause or proceeding so transferred to the superior court, any judge of that court, when authorized by a rule of the supreme court may make any order, certification or return that could have been made by the chancellor, the former chief justice, by a justice of the supreme court or judge of the circuit court, had the constitution not been adopted

Source C 2 16-78, L 1948, c 367, p 1503, §9

2A:26-4(10). Writs, process and the like issued before September 15, 1948 deemed returnable where. All writs, process, rules, orders, notices and the like, issued, made or given prior to September 15, 1948, in any cause or proceeding so transferred and returnable after said date either in the court in which it was issued, made or given or in any court succeeding to the jurisdiction of such court, shall be deemed to be returnable in the court to which such cause or proceeding is transferred and action thereon may be taken by the court or the clerk of the court or by any judge thereof holding the court in the same manner as nearly as may be and to the same effect as though the same had been issued, made or given in such court.

Source C 2 16-79, L 1948, c 367, p 1503, §10

2A:26-4(11). Writs, processes and the like made returnable before court to be established by judicial article which has not gone into effect. Wherever in any cause or proceeding any writ, process, rule, order, notice, or the like issued or given prior to September 15, 1948, was made returnable in or before a court, or judge thereof, to be established by the judicial article of the constitution, the same shall be effective notwithstanding that said judicial article had not gone into effect

Source C 2 16-80, L 1948, c 367, p 1503, §11

2A:26-4(12). Appeals pending September 15, 1948; appeals to be taken from adjudication made prior thereto. Appeals taken prior to September 15, 1948, and pending on said date shall be heard and disposed of by the court to which the same is transferred by the constitution. Where an appeal has not been so taken but may be taken thereafter from an adjudication made prior to said date, it shall be taken as follows

1 From the court of chancery—to the supreme court

2 From the former supreme court—to the supreme court

3 From the prerogative court—to the new supreme court

4 From the circuit court of a county—to the supreme court

5 From the court of oyer and terminer of a county, in a capital case—to the supreme court

6 From the court of oyer and terminer, in other than a capital case, the court of quarter sessions, the court of special sessions or the common pleas court, of a county—to the appellate division of the superior court

7 From the orphans' court of a county—to the appellate division of the superior court

8 From any other court, where an appeal could have been taken to the former supreme court, or to the prerogative court, had the constitution not been adopted—to the appellate division of the superior court

Source C 2 16-81, L 1948, c 367, p 1503, §12

2A:26-4(13). Final determination appealable to supreme court. In any such cause or proceeding, so transferred, the final determination thereof, on appeal, by the appellate division of the superior court, shall be appealable to the supreme court, if an appeal could have been taken to the court of errors and appeals from the former supreme court had the constitution not been adopted

Source C 2 16-82, L 1948, c 367, p 1504, §13

2A:26-4(14). Causes involving prerogative writs transferred to appellate division of superior court. All causes and proceedings involving the prerogative writs, so transferred to the appellate division of the superior court, shall be heard and disposed of in said division, but where evidence is to be taken in such cause or proceeding, the evidence may be taken before a judge of the law division of such court upon such terms as the appellate division deems proper and upon completion of the taking of the evidence it shall be made a part of the record before the appellate division

Source C 2 16-83, L 1948, c 367, p 1504, §14

2A:26-4(15). Application to court to which cause is transferred; hearing. Any party to a cause or proceeding, so transferred, may apply, on notice to the adverse party, to the court, or a judge thereof, to which the cause or proceeding is transferred, for a hearing or for direction as

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to the manner in which such cause or proceeding shall be further prosecuted, and the said court or judge shall grant such hearing or make such direction as will protect the rights of the parties and provide for a disposition of the cause or proceeding on the merits

Source C 2 16-84, L 1948, c 367, p 1505, §15

2A:26-4(16). Liberal construction. This is a remedial act and shall be liberally construed to prevent surprise and injustice to the litigants concerned with such pending causes and proceedings

Source C 2 16-85, L 1948, c 367, p 1505, §16

2A:26-4(17). Effective date. This act shall take effect September 15, 1948

Source C 2 16-86, L 1948, c 367, p 1505, §17

2A:8-101. Dockets, pleadings, papers and documents in proceedings pending before justices of peace on December 31, 1948. Upon the expiration of 30 days from the effective date of this act, every former justice of the peace shall file in the office of the county clerk his dockets kept in the small cause court and all pleadings, papers and documents in all causes, including landlord and tenant proceedings, pending before him in said court on December 31st, 1948. Every county clerk shall forthwith after the effective date of this act, give notice in writing, by registered mail, to each justice of the peace, who was in office in his county on December 31st, 1948, to file the said dockets, pleadings, papers and documents as required by this act and if any such justice shall fail or neglect to comply with said notice and this act accordingly, the county court may, by order, direct the same to be filed at a short day to be specified in the order and failure or neglect to comply with any such order shall be deemed to be a contempt of the county court

2A:33-1. Judgments which may be docketed. Final judgments of a small cause court, when not less than \$10 00, exclusive of costs, remain due thereon, may be docketed in the court of common pleas of the county in which the small cause court is held

Source R S 2 33-101, L 1903, c 165, p 274, §72 [C S p 3002, §72]

2A:33-2. Statement of justice and affidavit of plaintiff filed with clerk of court of common pleas. If a judgment is to be docketed under authority of section 2 33-101 of this title, there shall be filed with the clerk of the court of common pleas of the proper county a statement, signed by the justice before whom the judgment was recovered, under his hand and seal, containing the name of the justice, the names of the parties for and against whom the judgment was rendered, the amount and date of the judgment, and the date of issue and return of the execution issued thereon, if any. A justice of the peace whose term of office has expired or who has resigned may make and certify the statement

with the same force and effect as if still in commission.

There shall also be filed with the statement an affidavit of the plaintiff or his attorney, setting forth that the judgment about to be docketed is still due and unpaid, in whole or in part, stating the amount due

Source R S 2 33-102, L 1903, c 165, p 274, §72 [C S p 3002, §72]

2A:33-3. Statement by clerk of court of common pleas when justice's docket filed with him.

When, from the docket of a justice which has been deposited in the office of the clerk of the court of common pleas pursuant to the provisions of section 2 33-150 of this title, it appears that there is entered therein the record of a cause tried before such justice, and that a judgment has been entered in such cause for an amount not less than \$10 00, exclusive of costs, the clerk shall, upon the request of the person in whose favor such judgment was entered, his attorney, executors, administrators or assigns, and whether or not execution has been issued thereon, make and certify, under his hand and seal, a statement of the judgment, to the same effect as the statement required by section 2 33-102 of this title

The statement so made and certified, when accompanied by plaintiff's affidavit as required by said section 2 33-102 shall, for the purpose of docketing such judgment in the court of common pleas, be as effective as the justice's statement required by said section 2 33-102

Source R S 2 33-103, L 1903, c 165, p 275, §73 [C S p 3003, §73]

2A:33-4. Clerk's docket; entries therein; force and effect as judgment of court of common pleas.

The clerk of each court of common pleas shall provide and keep a docket, in which shall be entered a copy of the statement provided for by either section 2 33-102 or section 2 33-103 of this title, together with a note of the amount due on the judgment as shown by plaintiff's affidavit

Each entry so made shall have the same force and effect as a judgment of the court of common pleas

Source R S 2 33-104, L 1903, c 165, p 275, §74 [C S p 3003, §74]

2A:33-5. Index to docket; dockets and indexes public records. Each clerk of a court of common pleas shall make and keep a complete alphabetical index to the docket mentioned in section 2 33-104 of this title

The dockets and indexes thereto shall be public records, to which all persons shall have access

Source R S 2 33-105, L 1903, c 165, p 275, §77 [C S p 3004, §77]

2A:33-6. Scire facias on docketed judgment.

A judgment docketed in a court of common pleas as herein directed may be revived by scire facias in the court of common pleas as original judg-

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ments of a court of common pleas may be revived

Source R S 2 33-107, L 1903, c 165, p 275, §76 [C S p 3004, §76]

2A:33-7. Effect of judgment on entry of rule for record; executions thereon. A judgment of a court of common pleas on appeal from a small cause court shall, from the time of the entry of a rule pursuant to section 2 33-128 of this title, affect and bind all real estate in the county wherein the court is held and belonging to the person against whom the judgment is rendered, and executions against the goods and real estate of such person may issue out of the court of common pleas immediately upon the entry of the rule

Source R S 2 33-130, L 1903, c 165, p 278, §89 [C S p 3008, §89]

2A:39A-2. Accrued causes of action; time for commencement of action. All causes of action to recover a sum of money as damage for the alienation of affections, criminal conversation, seduction and breach of contract to marry which accrued prior to June 27th, 1935, and were not commenced within 60 days after such date, are completely and forever barred for lapse of time

2A:39A-3. Actions for breach of contracts to marry existing on June 27th, 1935. All actions to recover a sum of money for a breach of contract to marry, existing on June 27th, 1935, must be commenced within 60 days after the cause of action has accrued and all such actions not so commenced shall be thereafter completely and forever barred for lapse of time

Source R S 2 39A-3, R S 2 40-13

2A:65-8. Prior judgments by confession validated. L. 1911, c 354, p 740 (1924 suppl §134-53a), entitled "A supplement to an act entitled 'supplement to an act entitled "An act concerning proceedings on bonds and mortgages given for the same indebtedness and the foreclosure and sale of mortgaged premises thereunder" (which said act was approved March 12th, 1880), and which supplement was approved May 28th, 1907," approved May 2nd, 1911, saved from repeal

Source R S 2 65-8

2A:65-9. Action on bond secured by mortgage by ejectment by mortgagee for possession; redemption by mortgagor; satisfaction and discharge of mortgage by court. Section 1 of an act entitled "An act concerning mortgages" (Revision), approved March 27th, 1874 (Rev 1877, p. 701, §1 [C. S. p 3408, §1]), saved from repeal.

2A:65-10. Suit to compel payment of amount due mortgagee or to foreclose equity of redemption; order or decree before hearing of cause. Section 2 of an act entitled "An act concerning mortgages" (Revision), approved March 27th,

1874 (Rev. 1877, p 702, §2 [C. S p. 3409, §2]), saved from repeal

Source R S 2 65-10

2A:65-11. Exceptions to sections 2:65-9 and 2:65-10. Section 3 of an act entitled "An act concerning mortgages" (Revision), approved March 27th, 1874 (Rev 1877, p 703, §3 [C S p 3409, §3]), saved from repeal

Source R S 2 65-11

2A:65-13. Title conveyed by sheriff's deed notwithstanding misnomer of certain defendants. Whenever, in any suit to foreclose the equity of redemption of defendants in mortgaged premises, such proceedings shall have been had in the court of chancery or the superior court or other court of competent jurisdiction that a final decree or judgment has been entered against the defendants named in any bill of complaint, complaint or other original pleading, by virtue of which proceedings a sale of such premises shall have been made by the sheriff of any county of this state or by other person directed to make sale, which sale shall have been confirmed by order of any court of competent jurisdiction when confirmation thereof was required, and a deed for such premises shall have been delivered by any such sheriff or other person to the purchaser of such mortgaged premises, such deed shall transfer to the purchaser, all the right, title and interest of such defendants named in the bill of complaint, complaint or other pleadings aforesaid, who shall have been brought into court by publication, notwithstanding that in any order of publication which may have been entered in such cause, or notice served thereunder, or in any decree pro confesso, or in any final decree or judgment, or execution or order of sale issued thereunder, any defendant who may have been made a party defendant to such bill of complaint, complaint or other original pleading, in a representative capacity has been designated in such order, notice, decree pro confesso, final decree, judgment or execution or order of sale thereunder by his representative title or not, if it appear that such person was actually named by his own proper name in such order of publication, and notice thereof published thereunder, and in such decree pro confesso, and final decree, or in such judgment, and in such execution or order of sale issued thereunder, and if the proof or publication of such order and notice, and the decree pro confesso, and final decree, or the judgment, and the execution or order of sale issued thereunder discloses compliance in all other respects with the law and rules of court in such case made and provided

Source C 2 65-13, as am L 1948, c 378, p 1557, §3

2A:65-23. Sale of entire premises when entire amount not due; disposition of proceeds. L. 1902, c 158, p 530, §56 (R. S. 2 65-23), saved from repeal.

2A:212-4.1. Hudson county; first criminal judicial district. All that part of the county of Hudson, in the state of New Jersey, comprising the city of Bayonne, and the seventh, eighth, and ninth wards of Jersey City, as now constituted, be and the same is hereby established and incorporated to be the first criminal judicial district of the county of Hudson

Source L 1940, c 201, p 859, §1

2A:212-4.2. Hudson county; second criminal judicial district. All that part of the county of Hudson, in the state of New Jersey, comprising the town of Kearny, the town of Harrison, and the borough of East Newark, as now constituted, be and the same is hereby established and incorporated to be the second criminal judicial district of the county of Hudson

Source L 1940, c 201, p 859, §2

2A:212-4.3. Hudson county; third criminal judicial district. All that part of the county of Hudson, in the state of New Jersey, comprising the town of Guttenberg, the township of North Bergen, the township of Weehawken, the town of Secaucus, the town of West New York and the city of Union City, as now constituted, be and the same is hereby established and incorporated to be the third criminal judicial district of the county of Hudson

Source L 1940, c 201, p 859, §3

2A:212-4.4. Hudson county; fourth criminal judicial district. All that part of the county of Hudson, in the state of New Jersey, comprising the city of Hoboken, and the first, second, third, fourth, fifth, sixth, tenth, eleventh, and twelfth wards of Jersey City, as now constituted, be and the same is hereby established and incorporated to be the fourth criminal judicial district of the county of Hudson

Source L 1940, c 201, p 859, §4

2A:212-4.5. Application of other laws. The provisions of an act entitled "An act to create criminal judicial districts in counties of this state and to establish therein criminal courts of record and to regulate the jurisdiction, duties and powers of such courts", approved March 29th, 1926, and the various amendments thereof and supplements thereto, so far as the same may be applicable, shall apply to the districts hereby established

Source L 1940, c 201, p 860, §5

2A:220-5.3. Tenure of clerk to recorder in city of second class with population not exceeding 100,000; discharge, suspension or reduction. Whenever any person holding the position or office of clerk to the recorder in any city of the second class in this state having a population not exceeding 100,000 inhabitants, as ascertained by the preceding federal census, shall have served in that position or office continuously for a period of 10 years from the date of his original appointment, he shall continue to hold said position or

office during his good behavior, and shall not be discharged, dismissed or suspended from office or reduced in pay except for inefficiency, incapacity or other just cause, and until such person shall have been furnished with written charges stating the reason for such discharge, dismissal, suspension or reduction, and shall have been given a reasonable time to make written answer thereto, nor shall such discharge, dismissal, suspension or reduction be made until the charge or charges shall have been examined and found true in fact by the governing body of the municipality in which such person is serving, after a hearing, upon reasonable notice to the person charged, at which time he may be represented by counsel and offer testimony or other evidence in his own behalf

Source R S 2 220-5 3

3A:2-43. Foreign wills probated or recorded in state prior to July 4, 1888; record informal or lost. Where any foreign will or a copy thereof, or a copy of the record of any foreign will or of the exemplification thereof, shall have been probated, filed or recorded in this state, prior to July 4, 1888, and such record or exemplification of such foreign will, from any state or country, shall be informal or cannot be found in the office of the register of the prerogative court or in the office of the surrogate of any county in this state wherein such foreign will shall have been probated, any person interested therein may file with the register or any such surrogate an exemplified copy of the probate in such state or country, and upon the filing thereof, whether prior to or after July 4, 1888, such exemplification of such probate shall be received in all the courts of this state in the same manner and to the same extent and effect as if such exemplification had remained on file in the office of the register or such surrogate continuously from the date of the probate of such foreign will in this state

Source R S 3 2-45, L 1911, c 309, p 671, §1 [1924 suppl §146-25a], suppl to L 1898, c 234, p 715

Note of Reporter This section is preceded by the following preamble—Preamble Whereas, by an act of the legislature of the state of New Jersey, approved March 28th, 1866, it was among other things, provided as follows

"26 When any will shall have been admitted to probate in any state or territory of the United States or the District of Columbia, or in any foreign state or kingdom, and any person shall desire to have the same recorded in this state, for the purpose of making title to lands or real estate in this state, it shall be lawful for any surrogate of any county in this state, upon an exemplified copy of such will being filed in his office, exemplified and attested as a true copy in the manner required by the laws of the state, district or territory in which such will shall have been admitted to probate, to make it legal evidence in such state, district or territory, to record such will and file the said copy in his office, and any such will upon being so recorded, shall have the same force and effect in respect to all lands and real estate therein devised, as if the same had been admitted to probate in this state, and such record or certified copies thereof shall be received in evidence in all courts of this state" which said act was re-enacted in the revision of 1874; and

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Whereas, said act was amended by an act approved March 17th, 1882, to read as follows

"26 And be it enacted, That when any will shall have been admitted to probate in any state or territory of the United States or the District of Columbia, or in any foreign state or kingdom, and any person shall desire to have the same recorded in this state, for the purpose of making title to lands or real estate in this state, it shall be lawful for any surrogate of any county in this state, upon an exemplified copy of such will being filed in his office, exemplified and attested as a true copy in the manner required by the laws of the state, district or territory in which such will shall have been admitted to probate, to make it legal evidence in such state, district or territory, to record such will and file the said copy in his office, and any such will, upon being so recorded, shall have the same force and effect in respect to all lands and real estate whereof the testator died seized, as if said will had been admitted to probate in this state, and all conveyances of such real estate heretofore or hereafter made by any executor or executors, or the survivor or survivors of them, or by any devisee or devisees, shall be as valid as if said will had been admitted to probate in this state, and such record or certified copies of said will shall be received in evidence in all courts of this state," and

Whereas, the court of errors and appeals of this state in 1888, construed said act, as amended, to require that "where the object of making a foreign will a record in this state is for the purpose of making title to lands, the record exemplified from another state must contain the proofs taken upon the probate that it may appear by such proofs that the will was made and executed in the manner and with the formalities prescribed by the statute of this state for devises of land," and

Whereas, many wills made in foreign states or kingdoms, territories of the United States or the District of Columbia, and probated therein, contain devises of lands situate in this state, which foreign wills have been admitted to probate in this state, or a copy of such will or the record thereof filed and recorded in the office of the surrogate of any county in this state, but the record of said probate in this state, or the copy of said will or of the record thereof probated in the foreign state does not contain proofs that the will was made and executed in the manner and with the formalities prescribed by the statute of this state for devises of lands, by reason of which defect said devises are rendered uncertain or fail and the intention of the testator with respect thereto may be defeated

3A:2-44. Wills probated 100 or more years ago in another state or country. Where any will has been admitted to probate 100 years or more, in any other state of the United States, or in any foreign country, if the testator thereof was, at the time such will was made, in the military or naval service of the United States, a copy of such will, together with the record of probate thereof, certified under the great seal of the state or country, or exemplified under the act of congress of March 27, 1804, may be recorded in the office of the surrogate of the county of this state where any lands therein devised may be situate, although the state or country named in the will as testator's residence was not the state or country where such will was probated, and such record or certified copy thereof shall be receivable in evidence whenever the title to lands devised by such will shall come in question in any judicial proceedings in this state, and when so received, shall be conclusive evidence that the lands devised in such will vested in the devisee, notwithstanding that such testator may or may

not have been a resident of such state or country at the time of making such will or at the time of his death, if such will was executed in accordance with the laws of this state in force when such will was probated in such state or foreign country.

Source L 1948, c 364, p 1466, §17

3A:2-45. Wills probated 100 or more years ago; presumption of testator's competency. When 100 or more years shall have transpired since the admission of a will to probate in any state or country, the testator shall be conclusively presumed to have been competent to make the same and testimony to the contrary shall be inadmissible. When such will was made by the testator while engaged in the military and naval service of the United States, it shall be valid notwithstanding that the same was not probated in the state or country therein named as the testator's residence

Source R S 3 2-12, L 1916, c 106, p 234, §1 [1924 suppl §236-35a], suppl to Rev 1877, p 1243

3A:2-46. Wills of residents who died before 1895 probated in other states; conveyances valid. Whenever the will of any person residing in this state, who died prior to January 1, 1895, which will has not been admitted to probate (or the probate thereof denied) in this state, but which has been admitted to probate in any state of the United States, and of which a copy, together with a copy of the certificate, order or decree of probate, or of the record thereof, duly exemplified and authenticated according to the act of congress, has been filed and recorded, or hereafter shall be filed and recorded, in the surrogate's office of any county in this state, then for the purpose of making title to real estate in this state, if it shall appear either from the attestation clause attached thereto, or forming a part thereof, or by the certificate, order or decree of probate, or the proofs of probate, or from any and all of them, that such will was executed in the manner and form as required by the laws of this state, the record of such will shall have the same force and effect in respect to lands and real estate whereof the testator died seized as if such will has been admitted to probate in this state, and all conveyances of such real estate heretofore or hereafter made by any executor, trustee, or the survivors or survivor of them, or by any devisee, under such will shall be as valid as if such will had been admitted to probate in this state, and such record, or certified copies thereof, shall be received in evidence in all courts of this state. Any person interested in such will, or thereunder, may cause such copy of such will, or of the record thereof, certificate, order or decree of probate and written proofs, if any there be, to be filed and recorded in the surrogate's office in any county of this state

Source L 1948, c 364, p 1467, §18

PROPOSED NEW RULES AND CHANGES IN RULES

Part I.

RULES RELATING TO THE SUPREME COURT.

1:2-5(h). Appeals from judgments nisi in matrimonial matters, 3 months.

Note of Reporter This rule is recommended as an important addition to avoid the existing conflict between the present period for appeal from final judgments, namely 45 days, and the statutory period of 3 months in matrimonial actions. It is submitted that the time should be covered by rule rather than statute, and that the 3 month period should be retained to coincide with the period required to make the judgment final.

1:2-21. Record on appeal.

a. On appeal from a trial court, 70 days after the filing of the transcript of the testimony, or the approval by the trial court of a statement prepared pursuant to Rule 1:2-23, or if no testimony was taken, or if the transcript of the testimony is filed before the notice of appeal is filed, 70 days after the filing of that notice, the clerk of the court below shall deliver to the appellate court 1 set of all pleadings filed, a transcript of the clerk's docket, a copy of the judgment, the original copy of the transcript of the testimony, if any, and such of the other papers on file and original exhibits as the parties may designate, which shall constitute the record on appeal.

- b. No change.
- c. No change.
- d. No change.
- e. No change.

Note of Reporter. This amendment has been suggested by the Essex county surrogate's office. It deals with the situation occurring not infrequently in the probate division of the county court and at times in the superior court, where the transcript is written up to enable the judge to prepare his opinion and is immediately put on file. Sometimes in such a situation the transcript will be filed more than 70 days before the appeal is taken, and in that case the rule, as promulgated, is unworkable.

1:8-22. Applications in forma pauperis.

a. Any court may on motion give to any indigent person appearing to have a cause of action, defense, appeal or other case therein, leave to sue or be sued as a poor person and may assign attorneys and counsel necessary to his case and relieve such person from the payment of costs.

b. Except as provided by any order of the court, no attorney, counsel or other person, shall take or agree to take, or seek to obtain, payment of any fee, profit or reward for the conduct of such a case or of any office or other expenses; nor shall he be required to expend any of his own money in the conduct of the case.

c. The court may at any time, upon good cause being shown, discharge the order for leave to sue or be sued as a poor person, in whole or in part, and may order such person to pay costs and

fees in the proportions and to the extent that shall be fair and just.

Note of Reporter. This rule takes the place of R S 2:26-2 and Rules 3:87-9 to 3:87-11. The rules should be repealed. Rules 3:87-11 and 3:87-10 are the same as subparagraphs (b) and (c) above with changes as indicated above.

The above Rule 1:8-22 goes beyond R S 2:26-2. That statute only authorized a plaintiff to sue in forma pauperis, under the statute, only a poor plaintiff could have counsel and attorneys assigned to him to prosecute his case without fee or reward, and only a poor plaintiff could be relieved from paying costs. The statute did not give a defendant such privileges. However, Rules 3:87-9 to 3:87-11 in connection with matrimonial actions allowed a defendant these privileges.

Further, see the amendment to C 2:25B-5 which is to be made a supplement to the title on fees and costs.

* * * * *

It is respectfully suggested that some rearrangement should be made of the rules relating to the supreme court (i.e. part I of the rules of court).

a. Rules 1:7-1 and 1:7-2 should be made respectively, 1:1-1 and 1:1-2 (changing the title of Rule 1:1 and renumbering the other sections thereof), b. Rules 1:7-3, 1:7-5 and the other provisions of Rule 1:7 should constitute Rule 1:11. The "General Provisions" applicable to all the courts will then come last.

c. Rule 1:8 should be made Rule 1:7 and the title changed to "Attorneys and Counsellors Admission to Practice". The present Rule 1:7-4 belongs under this rule.

d. Rule 1:9 should become Rule 1:8, and Rule 1:10 should become 1:9.

However, the new rules proposed herein do not make use of this new numbering system.

1:8-23. Actions prosecuted or defended by attorney only; exceptions. No person, except in his own case or as guardian ad litem, or except as he is admitted to speak pro hac vice or except as provided in Rule 1:7-4(b) with respect to appeals, shall be permitted to appear and prosecute or defend any action in any court, unless he is a licensed attorney at law of this state. Any person or attorney appearing in any action shall be under the direction of the court in which he acts.

Note of Reporter. The above rule is derived from R S 2:26-3.3.

1:10-1. How obtained; form of certificate. After the marriage of a woman attorney or counselor at law, and before she signs her name to any document which she is authorized or required to sign as attorney or counselor, she shall make and sign a statement in writing entitled in this court and addressed to this court of the following tenor and effect:

"I,, an attorney at law, or counselor at law, of the state of New Jersey, admitted to practice as an attorney, or counselor, at the term of the supreme court, 19...., do hereby certify that I did on the day of 19.., intermarry with, my present husband."

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"I do hereby elect to practice under my name as at the time of my admission with a hyphen after the surname followed by the surname of my husband" or

"I do hereby elect to practice under my name at the time of admission", as the case may be.

The statement shall be signed in both names and shall be verified by oath of the said attorney, or counselor, that the facts therein are true. She shall file the statement in the office of the clerk of this court and on filing it shall pay to the clerk a fee of \$5 00. The statement [shall be filed in the office of the clerk of this court, and the same] or a certified copy thereof shall be evidence of the right of such attorney or counselor to continue the practice of law under the name elected, and all judges, justices and others concerned are hereby required to take notice accordingly.

Note of Reporter The sentence "She shall file the statement in the office of the clerk of this court and on filing it shall pay to the clerk a fee of \$5 00" has been taken from C 2 16-64 Cf Rule 1 8-8(c)

1:11-1. How and when obtainable. If an attorney at law or counselor at law shall change his name under and pursuant to law, or if the written license issued to him shall be lost or destroyed, he may obtain a confirmatory license in the manner hereinafter provided. Each applicant for a confirmatory license shall on making his application pay a fee of \$10 00 to the clerk of this court for the use of the state. Nothing in this rule, however, shall be construed to prevent any such person from resorting to any other legal evidence to prove his right to practice in the courts in this state.

Note of Reporter The sentence "Each applicant for a confirmatory license shall on making his application pay a fee of \$10 00 to the clerk of this court for the use of the state" has been taken from C 2 16-64 Cf Rule 1 8-8(c)

Part II.

RULES GOVERNING CRIMINAL PRACTICE IN THE SUPERIOR COURT AND COUNTY COURTS.

2:1-2. Proceedings in the superior court. The superior court shall have cognizance of all crimes and offenses of an indictable nature, which have been or shall be committed or attempted in the state, and for that reason shall have authority to inspect indictments taken or to be taken before it, to make and continue process thereon, to hear and determine such crimes and offenses, and to punish all persons convicted thereof, according to law.

Note of Reporter. This differs from the statute 2A 3-4, in that the statute applies to crimes and offenses committed or attempted in the respective counties in and for which the county court is held, whereas the rule affecting the superior court applies to crimes and offenses committed or attempted "in the state"

Renumber Rules 2 1-2 and 2 1-3, making them Rules 2 1-3 and 2 1-4.

2:7-15. Testimony of spouse. Where a defendant shall have been indicted for any crime

constituting a sex offense under the laws of the state of New Jersey, the spouse of the defendant shall be competent to testify on any and all matters relevant to the trial of the issues

2:11(a). In appeals from judgments of conviction in traffic cases a copy of the notice of appeal shall be served upon the prosecutor of the pleas of the county wherein the offense was committed, and where the complaint is made by a motor vehicle inspector or a member of the state police, the notice shall, instead of being served on the prosecutor of the pleas be served on the attorney general

Service of such notice may be made personally or by registered mail

Note of Reporter Under the present Rule 2 11(a) notice of appeal must be served upon the person who signed the complaint. The complaint is usually signed by a peace officer. Form 11 prescribing the complaint in traffic cases does not have the address of the police officer. It may be difficult to ascertain his address and if found then difficulty may be encountered in serving him. The proposed rule has its basis in present R S 39 5-16 and seems more practical

Part III.

RULES GOVERNING CIVIL PRACTICE IN THE SUPERIOR COURT.

3:1-1. Scope of rules. The rules in Part III govern the practice and procedure in the law and chancery divisions of the superior court in all actions of a civil nature whether cognizable as cases at law, in equity or otherwise.

Note of Reporter Some confusion arose in the minds of counsel in the case of *In re Pfizer*, 8 N J Super 6 (App Div 1950) because, as it was said in the opinion, all rules in part III seem "to apply to all divisions of the Superior Court, including the Appellate Division. Rule 3 1-1"

3:4-3. By whom served. When any process is to be served by delivery or leaving a copy thereof, service shall be made by the sheriff, or other officer authorized by law, of any county in this state or by a person specially appointed by the court for that purpose, except that a subpoena may be served as provided in Rule 3-45.

Note of Reporter The rule now provides that "service of all process shall be made by the sheriff", etc. The sheriff or other person specified does not make service of process upon persons outside the state under Rule 3 4-5 or where service is made by mail under Rule 3 79-3

3:4-4. Summons; personal service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with the original and a copy of the summons and as many additional copies thereof, each with a copy of the complaint annexed, as there are persons to be served. Service shall be made as follows

a Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and complaint to him personally; or by leaving a copy thereof at his dwelling house or usual place of abode with some competent member of his family of the age of 14 years or over then residing therein, or by delivering a

copy thereof to a person authorized by appointment or by law to receive service of process on his behalf

b Upon an infant, by delivering a copy of the summons and complaint personally (1) to his father, mother or the guardian of his person or a competent adult member of his family with whom he resides, or if service cannot be made upon any of them, then as provided by order of the court, and (2) if the infant be of the age of 14 years or over, also to the infant.

c Upon an incompetent person, by delivering a copy of the summons and complaint personally (1) to the guardian of his person or a competent adult member of his family with whom he resides or, if he is living in an institution, then the director or chief executive officer of the institution, or if service cannot be made upon any of them, then as provided by order of the court, and (2) unless the court otherwise orders, also to the incompetent

d Upon a domestic or foreign corporation, by delivering a copy of the summons and complaint personally to an officer, director, trustee or a managing or general agent, or by leaving a copy thereof at his dwelling house or usual place of abode with some competent member of his family of the age of 14 years or over then residing therein; or by delivering a copy thereof to any person authorized by appointment or by law to receive service of process on behalf of the corporation; or by leaving a copy of the same at the registered office of the corporation with any person in charge thereof

e Upon a partnership, by delivering a copy of the summons and complaint personally to a partner, a managing or general agent or an officer, or by leaving a copy thereof at his dwelling house or usual place of abode with some competent member of his family of the age of 14 years or over then residing therein

f Upon an unincorporated association which is subject to suit under a recognized name, by delivering a copy of the summons and complaint personally to an officer, a managing or general agent; or by leaving a copy thereof at his dwelling house or usual place of abode with some competent member of his family of the age of 14 years or over then residing therein

g Upon the state of New Jersey, under section 2A:61-1 et seq of the statutes, by delivering to the attorney general or to any person in his office designated by him in a writing filed with the clerk of the court, a copy of the summons and as many copies of the complaint as there are liens or encumbrances of the state referred to in the complaint. If the lien or encumbrance of the state arises by reason of a recognition entered into in connection with any proceeding in any county court or by reason of a criminal judgment rendered in such a court, the summons and 1 copy of the complaint shall be served upon the county prosecutor or prosecutor of the pleas of the county, or to any person in his office

designated by him in a writing filed with the clerk of the court

h Or upon any defendant, as may be provided by law

Note of Reporter The changes made in paragraphs (d), (e) and (f) spell out the phrase "serving in the manner prescribed in paragraph (a)"

The new paragraph (g) is based in part on R S 2 61-2 and 2 61-3 Cf Federal Civil Rule 4(d)4 as to service on employees in the U S attorney's office, this may be a useful provision, although as a practical matter service is generally acknowledged. The proposed rule requires additional copies to be served on the attorney general with respect to each encumbrance referred to in the complaint. This facilitates administration and is now the unofficial practice

3:5-1. Service; when required. Unless otherwise directed by the court, every order and judgment, every pleading subsequent to the original complaint, every written motion, other than one which may be heard ex parte, and every written notice, appearance, demand, brief or memorandum of law, offer of judgment, bill of costs, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons

Note of Reporter R S 2 27-411 provides that where costs are taxed without notice, a copy of the bill of costs must be served upon the attorney of each adverse party who has appeared in the cause and who is interested in reducing the amount thereof. The above amendment takes care of this provision

3:5-2. Amend Rule 3 5-2 so as to strike out the provision requiring registered mail, inserting in lieu of the words "by mailing it registered mail, return receipt requested" the following words "by mailing it ordinary mail".

If the above proposal is not adopted by the supreme court then there should be added at the end of Rule 3 88-2 the words "The mail may be unregistered". Also at the end of Rule 3 95-3(a), "In any case the mail may be unregistered"

Note of Reporter The bar is strongly desirous of abolishing the provision for registered mail. The federal practice of ordinary mail has proved very satisfactory, and it is hoped that the court will agree to this change in the rules. However if not, then the 2 probate rules above stated should be amended. Rule 3 98-2 has to do with notices mailed on applications for letters of administration, etc., and Rule 3 95-3(a) has to do with notices mailed when an account is settled on notice. Such notices in probate proceedings have always been sent by ordinary mail, and notwithstanding Rule 3 5-2(a), the practice throughout the state has been to continue to send them by ordinary mail, the theory is that Rule 3 5-2(a) has to do with notices sent pendente lite (usually to a person who has already engaged an attorney), and therefore it did not affect the existing probate practice where notices constituted the original process in the cause. The matter obviously should be clarified

3:5-2(c). Where service of a copy of any paper is to be made upon any person, the court by its order or judgment may authorize the copy to be certified as a true copy by any attorney at law and, if so certified, such copy shall be as effective for the purpose of making service as if certified under the signature of the clerk of the court

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However, when service of a copy of any paper referred to in Rule 3 5-1 is to be made by one party upon another party or his attorney, the copy need not be certified in any manner.

Change title of Rule 3.5-2 to "Same; how made; proof of service; certifications of papers"

Note of Reporter The first sentence of this rule is derived from R S 2 26-3 1

3:6-3. For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by these rules or by order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as provided in Rules 3 56-3 and 3 59-3, any opposing affidavits shall be served not less than 24 hours before the hearing unless the court permits them to be served at a later time

Note of Reporter Fractions of a day being negligible, the practice not infrequently has been to serve opposing affidavits late in the afternoon on the day before the hearing of the motion. This leaves too little time for the preparation of any reply affidavits. Another remedy would be to require opposing affidavits to be served not less than 2 days before the hearing, but this seems to give the party serving them too short a time, especially when he has had only 5 days' notice of the motion

3:7-1. Pleadings. There shall be a complaint and an answer; an answer to a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint pursuant to Rule 3.14; a third-party answer, if a third-party complaint is served, and a reply, if an affirmative defense is set forth in an answer and the pleader wishes to aver any matter constituting an avoidance of the defense. No other pleading is allowed.

3:9-3. Pleading corporate existence. In every civil action to which a corporation is a party, the existence of the corporation shall be taken to be admitted, unless it is put in issue by the pleadings.

Present Rules 3 9-3 to 3 9-6 should be re-numbered so as to make them 3 9-4 to 3 9-7

Note of Reporter New Rule 3 9-3 is derived from the first sentence of R S 2 26-3. Rule 7 5-7 fits this rule into the county district court and municipal court practice, and hence the second sentence of R S 2 26-3 is unnecessary

3:10-5. Sums and numbers. In all papers filed, sums and numbers shall be in figures, but this rule shall not apply to the recording of a verdict.

Note of Reporter. The rule as it is written is not clear. It may mean that in a judgment sums and numbers must appear in words. If so, the last words of the rule should read "to the recording of a verdict or to a judgment". If this is the rule, it is not obeyed, a judgment in which there are a great many figures (particularly a judgment in which figures are tabulated) would become very cumbersome if they were all set out in words

The rule may mean that in recording a judgment words as well as figures shall be used. If so, the last words of the rule should read "to the record-

ing of either a verdict or a judgment". Judgments now are recorded in the superior court by a photographic process. It therefore is infeasible to have the clerk interline in words the figures appearing in a judgment

For the reasons above indicated it is proposed that the rule be changed as stated

3:17. Actions against a trustee A trustee of an express trust may be sued without joining with him the person for whose benefit a mortgage, judgment or encumbrance upon realty is held but nothing herein shall permit an action against a trustee alone where he holds title to realty for the benefit of another.

Note of Reporter. Rule 3 17-1 permits an action by a trustee without the necessity of joining cestus que trustent but the rule does not permit an action against the trustee alone. Decisions recently have justified an action against the trustee alone where he holds a mortgage in trust but not where he holds legal title to realty as trustee. *Paridiso v Mazejy*, 3 N J 110 (1949), *Heward v Hyde*, 3 N J Super 492 (Super Ct Ch Div 1949). R S 2 65-8 3 permits foreclosure actions against a trustee alone. Similarly R S 54 5-87 6 permits tax foreclosures to be brought against a trustee alone. Some question has been raised as to their constitutionality. *City of Newark v Fidelity Union*, 137 N J E 92 (Ch 1943). These statutes are to be repealed because they involve procedure. A rule is necessary to crystalize the decisions

3:17-2. Infant or incompetent person. An infant or incompetent person shall be represented in an action by his guardian appointed in this state, whether appointed as to his person or property, or, if there be none appointed or if the court shall so direct because of a conflict in interest between guardian and ward or for other cause, then by his guardian ad litem appointed by the court. An order for the appointment of a guardian ad litem may be made

a Upon a verified petition of an infant, if he be of the age of 14 years, accompanied by the consent of the guardian ad litem to act, acknowledged by him

b In the case of an infant under that age or of an incompetent, then upon a verified petition of some friend on his behalf, accompanied by a like consent

c Upon motion of another party to the action, where no petition is filed on behalf of the infant or incompetent and either his default has been entered by the clerk or in an action brought in a summary manner on order to show cause pursuant to Rule 3 79, 10 days have elapsed after the service of the order or in a probate action brought on notice, 10 days have elapsed after the mailing to him of the notice. Ten days' notice of the motion shall be given, in the case of an infant, (1) to his father, mother or the guardian of his person or a competent adult member of his family with whom he resides, or if notice cannot be given to any of them, then as provided by order of the court, and (2) if the infant be of the age of 14 years or over, also to the infant, or, in the case of an incompetent, (1) to the guardian of his person or a competent adult member of his family with whom he resides or, if he is living in an institution, then the director or chief executive officer of the in-

stitution, or if notice cannot be given to any of them, then as provided by order of the court and (2) unless the court otherwise orders, also to the incompetent. In a case where process is served personally, the notice may be served personally at the time of the service of process, or pursuant to Rule 3 5-2(a) at any time thereafter; in other cases it may be served by mail with any process or notice that is mailed, or thereafter pursuant to Rule 3 5-2(a). In lieu of the provisions of this rule, such notice of the motion may be given to such persons and in such manner, as the court may on motion without notice order, or

d Upon motion of the court

Note of Reporter. The changes are of phraseology or of a minor character

3:17-4. Unknown defendant.

1 When it shall appear by affidavit of inquiry that the affiant has been unable to ascertain the name or identity of a defendant, or a part of his name, the defendant may be designated in the action in such manner as shall fairly serve to describe his interest in the action and tend to identify him, using so much of his name as is known. The person designated shall thereupon be considered a defendant to the action and as sufficiently described for all purposes therein. The inquiry and affidavit shall be made as in the case of a party to be served under Rule 3 4-5(b).

2 The designations stated in this paragraph (2) illustrate Rule 3 17-4 and shall not be taken as the exclusive manner of designating the persons herein referred to. When it shall appear by the affidavit of inquiry that the affiant has been unable to ascertain

a Whether or not any male defendant is married, or, if married, the Christian name of his wife, then the wife, if any he has, may be made a defendant by designating her by his Christian name and surname, with "Mrs" prefixed thereto, or

b Whether or not any female defendant is married, or, if married, the Christian name and surname of her husband, then the husband, if any she has, may be made a defendant by designating him as "the husband of", inserting the name of the female defendant in the blank, or

c Whether or not any person is still alive or by reason of alienation or otherwise is still the owner of certain property or of any interest therein, and if dead or no longer the owner thereof, what are the names of any of his successors in right, title and interest in the same, including, but without limitation, spouses, next of kin, legatees, heirs, devisees, grantees, assignees, judgment creditors, receivers, trustees in bankruptcy, guardians, lienholders and all persons claiming under or through any of them, if any, then the same may be made parties defendant by designating them thus

"... .., and his successors in right, title and interest", inserting the name of such person in the blank.

d All or any of the successors in right, title and interest, as above stated, of any person known to be either dead or to be no longer the owner of certain property or of an interest therein, then those of the successors who are unknown may be made parties defendant by designating them thus "the successors of in right, title and interest" inserting the name of such person in the blank

Note of Reporter. This amended rule takes the place of C 2 26-59 7, as amended by L 1950, c 115, and 2 26-59 8 (L 1948, c 355, §8), R S 2 27-42, R S 2 29-35, as amended by L 1941, c 402, p 1029, §1, R S 2 29-36 and 2 29-37, perhaps a portion of R S 2 29-38 to 2 29-41, perhaps all or a portion of R S 2 65-16 to 2 65-19, as amended by L 1949, c 112, perhaps 2 71-38 and 2 71-39, as amended by L 1949, c 113, §11 and §12, R S 2 76-7, as amended by L 1949, c 114, §5, and 2 76-9, as amended by L 1949, c 114, §7, a portion of R S 2 76-22, 2 76-23, 2 76-25 et seq, as amended by L 1949, c 114, §20, et seq, R S 3 43-7 in part, R S 54 5-88 in part

3:24-2. Validity of statute, ordinance, etc.

When the validity of a statute, executive order, franchise or constitutional provision of this state is drawn in question in any action to which the state or an officer or agency thereof is not a party, the court shall require notice to be given the attorney general of the state; and the state shall upon timely application be permitted to intervene in the action. When the validity of an ordinance, regulation or franchise of a governmental subdivision of this state affecting the public interest is drawn in question in any action to which the governmental subdivision or an officer or agency thereof is not a party, the court shall require notice to be given the county counsel, city counsel, corporation counsel, or other chief legal officer of the subdivision thereof affected, and the subdivision shall upon timely application be permitted to intervene in the action

Note of Reporter. The above rule has been changed so as to cover the matter of a franchise referred to in the last 2 paragraphs of R S 2 26-72. Otherwise the rule spells out the practice more fully than the statute cited

3:25-1(b). If, upon the death of a sole plaintiff, his lawful representative or such other person as shall become interested by reason of such death, shall not, within such time as the court shall fix therefor, cause himself to be entered as plaintiff in the action in place of the deceased plaintiff, or if, upon the death of a sole defendant, the plaintiff shall not make the representative of the deceased defendant or others who have become interested by such death, parties to the action, and cause the action to stand revived within such time as the court shall direct therefor, the action shall be considered at an end, and shall not be revived

Renumber present Rule 3 25-1(b) so as to make it 3 25-1(c)

Note of Reporter. Rule 3 25-1(b) is derived from R S 2 26-22 1. See Note of Reporter to the tentative draft (dated March 27, 1948) to Rule 3 25-1(a)

3:25-4. Survival of action against successor fiduciary. If the authority of any executor, administrator, administrator pendente lite,

guardian, trustee, receiver or other fiduciary for any reason terminates, the court may on motion order substitution of any fiduciary succeeding to the possession or control of the assets in the hands of the former fiduciary

Note of Reporter. This rule has been derived from R S 2 26-24. However, that statute applied only to actions which had been brought against an administrator pendente lite or any other person having a limited administration. The rule is suggested in order to eliminate any doubt that may be occasioned by the words "transfer of interest" appearing in Rule 3 25-3—that is, a doubt as to whether those words aptly describe a suit brought against a fiduciary which abates when the fiduciary's authority terminates and another fiduciary is appointed. Further see Rule 3 25-3

Renumber Rules 3 25-4 and 3 25-5 and make them 3 25-5 and 3:25-6.

3:30-6. Certification and filing by officer; copies; notice of filing.

a. The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of" and shall promptly file it with, or send it by registered mail to, the clerk of the county where the case is to be tried. Upon being filed, the deposition shall be open to inspection, unless otherwise ordered by the court. The clerk of the county shall send the deposition to the clerk of the superior court 3 years after the filing of the complaint with the court, unless the court otherwise directs.

b. Documentary evidence exhibited before the officer or exhibits proved or identified by the witness, may be annexed to and returned with the deposition; or the officer shall, if requested by the party producing the documentary evidence or exhibit, mark it as an exhibit in the case, and return it to the party offering the same, and the same shall be received in evidence as if annexed to and returned with the deposition.

c. The party taking the deposition shall bear the cost thereof and shall at his expense promptly furnish the adverse parties, or at least 1 of them, with a copy.

Note of Reporter. The change consists merely of turning a clause into a sentence.

3:33. Interrogatories to parties. After the commencement of the action any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served without leave of court, except that if service is made by the plaintiff upon any defendant within 10 days after service upon him of the summons and complaint, leave of court granted with or without notice must be obtained. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and

within 15 days after the service of the interrogatories, unless the court, on motion and for good cause shown, enlarges or shortens the time, the party upon whom the interrogatories have been served shall serve on the party submitting the interrogatories a duplicate original or carbon copy of the answers duly executed. Within 10 days after service of interrogatories a party may serve written objections thereto together with a notice of the hearing of the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under Rule 3 26-2, and the answers may be used to the same extent as provided in Rule 3 26-4 for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 3 30-2 are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

Note of Reporter. Under Rule 3 5-5 all papers required to be served must be filed with the court. This rule has caused some confusion when read with Rule 3 33 above, which now requires the original of the answers to the interrogatories to be served on the party submitting the interrogatories. The reason for requiring the original to be served is to allow that party to use the original when he cross-examines the party executing the interrogatories.

Under the proposed amendment the party serving the answers must serve only a copy upon his adversary, but this copy must be signed and under oath and can be used for cross-examination purposes, then pursuant to Rule 3 5-5 he will have to file the original answer and a copy thereof with the clerk of the superior court.

3:40-7. Thirty days' notice of trial if either party has order for struck jury; striking without notice. When either party has obtained an order for a struck jury in any cause, there shall be given 30 days' notice of trial, in order to give a reasonable time to strike the jury; but the party having the order may, at any time before notice of trial, have the jury struck at his peril, by giving the adverse party lawful notice thereof.

3:43-4. General rule as to witnesses. Except as otherwise provided by court rule no person shall be excluded as a witness in any action, proceeding or matter of a civil or criminal nature, for any of the following reasons:

- a. Conviction of crime;
- b. Interest in the result of the action or trial as a party or otherwise;
- c. Incapacity or incompetency of any other party represented in the action; or
- d. Marital relationship.

Source. R S 2 97-1

3:43-5. Transactions with lunatic or decedent.

When one party to any civil action is a lunatic suing or defending by guardian or when one party sues or is sued in a representative capacity, no other party thereto may testify as to any transaction with or statement by the lunatic while of sound mind or with or by the decedent, unless

a The guardian of the lunatic or the representative of the decedent offers himself as a witness on his own behalf, and testifies to any transaction with or statement by his testator, intestate or ward, in which event the other party may be a witness on his own behalf as to all transactions with or statements by the lunatic while of sound mind or by the decedent, which are pertinent to the issue; or

b The action is founded upon any allegation of fraud, breach of trust, willful default or undue influence, in which cases the defendant may be sworn and examined as a witness on his own behalf as to transactions with or statements by the lunatic or decedent

Where a guardian or representative is a national bank, bank, trust company or other corporation, testimony of an officer or employee thereof shall be deemed testimony of the guardian or representative within the meaning of this section.

Source R S 2 97-2, L 1900, c 150, p 363, §4 [C S p 2218, §4], as am L 1931, c 163, p 305, §1, L 1931, c 189, p 474, §1, suppl to L 1900, c 150, p 362

3:43-6. Husband or wife in criminal actions. In any criminal action or proceeding a husband or wife shall be competent to testify against his or her wife or husband to prove the fact of marriage, but shall not be compelled to give any other evidence against the other spouse

Upon the trial of any indictment a married man shall be admitted to testify against his wife when he is the complainant against her, if he shall offer himself as a witness

Upon the trial of any indictment a married woman shall be admitted to testify against her husband when she is the complainant against him, if she shall offer herself as a witness

Except as in this rule or elsewhere provided by court rule no husband or wife shall be competent to give evidence against the other in any criminal action or proceeding

Source R S 2 97-4, as am L 1940, c 22, p 96, §1, R S 2 97-4, L 1898, c 237, p 886, §57 [C S p 1838, §57], L 1900, c 150, p 363, §5 [C S p. 2222, §5]

Note of Reporter Section 2 of the amendatory Act of 1940 provided that the act should take effect immediately

Title of act

An act to prohibit the disclosure of certain communications made in the course of religious discipline L 1947, c 324, p 1049

3:43-8. General rule as to privileges of witnesses. Except as otherwise provided by court rule, a witness shall not be excused from answering any questions relevant and material to the issue

Source R S 2 97-6, L 1900, c 150, pp 363, 364, §§5, 8 [C S pp 2222, 2223, §§5, 8]

3:43-10. Personal privilege of party called by

adverse party in civil action. In all civil actions in any court of record a party shall be sworn and shall give evidence therein when called by the adverse party, but no party thereto shall be compelled to be sworn or give evidence in any action brought to recover a penalty or to enforce a forfeiture. This rule shall not apply to actions for divorce.

Source R S 2 97-8, L 1900, c 150, p 362, §2 [C S p 2218, §2]

3:43-11. Privilege by reason of marital relationship. No husband or wife in any action for divorce on account of adultery shall be compelled to give evidence for the other, except to prove the fact of marriage

No husband or wife shall be compelled in any action, to disclose any confidential communication made by one to the other during marriage.

Source R S 2 97-9, L 1900, c 150, p 363, §5 [C S p 2222, §5]

3:43-12. Privilege of indicted defendant. On the trial of an indictment, the defendant shall be admitted to testify, if he offers himself as a witness

Source R S 2 97-10, L 1898, c 237, p 886, §57 [C S p 1838, §57]

3:43-14. Examination of adverse party as witness. Except as otherwise provided by court rule, when any party is called as a witness by the adverse party he shall be subject to the same rules as to examination and cross-examination as other witnesses

Source R S 2 97-12, L 1900, c 150, p 362, §2 [C S p 2218, §2]

3:43-15. Interest or conviction of crime as affecting credibility. For the purpose of affecting the credibility of any witness, his interest in the result of the action or his conviction of any crime may be shown by examination or otherwise, and his answers may be contradicted by other evidence. Conviction of crime may be proved by the production of the record thereof, but no conviction of an offender shall be received in evidence against him in a civil action to prove the truth of the facts upon which the conviction was based.

Source. R S 2 97-13, L 1898, c 235, p 855, §221 [C S p 1813, §221], L 1900, c 150, p 362, §§1, 3 [C S pp 2217, 2218, §§1, 3], L 1900, c 150, p 364, §7 [C S p 2223, §7]

3:43-16. Deceased party. Upon a new trial of a civil action wherein the parties have been examined as witnesses, if either party shall have died since the former trial and the action shall have been revived and proceeded with, by or against the legal representative of the deceased party, the surviving party and the legal representative shall be competent witnesses on the new trial, and the testimony of the deceased party on the former trial of the action may also be proved and admitted upon the new trial.

Source. R S 2 97-14, L 1900, c 150, p 364, §10 [C S p 2223, §10]

3:43-17. Deceased witness. When a witness, whose testimony at the trial of a civil action

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has been taken by the official stenographer of the court in which the action was tried, has died, his testimony so taken shall be admissible at a new trial of the action

Source R S 2 97-15, L 1900, c 150, p 364, §11 [C S p 2224, §11]

3:43-18. Comparison of signature or writing. In all cases where the genuineness of any signature or writing is in dispute, comparison of the disputed signature or writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by the witnesses, and such writings and the testimony of witnesses respecting the same may be submitted to the court or jury as evidence of the genuineness or otherwise of the signature or writing in dispute, provided nevertheless that where the handwriting of any person is sought to be disproved by comparison with other writings made by him, not admissible in evidence in the cause for any other purpose, such writings, before they can be compared with the signature or writing in dispute, must, if sought to be used before the court or jury by the party in whose handwriting they are, be proved to have been written before any dispute arose as to the genuineness of the signature or writing in controversy

Source R S 2 98-1, L 1900, c 150, p 367, §20 [C S p 2226 §20]

3:43-19. Authentication of signatures of witnesses to documents or papers; wills excepted. It shall not be essential to the admissibility in evidence of any document or other paper purporting to bear the signature of an attesting or subscribing witness that the authenticity or genuineness thereof or any signature thereto be proved by production of such witness, nor shall it be necessary to account for his absence, if such authenticity and genuineness be satisfactorily proved by other evidence. This rule, however, shall not apply to a last will and testament or codicil or a document or paper purporting to be such

Source R S 2 98-2, L 1927, c 207, p 394, §1, suppl to L 1900, c 150, p 362

3:43-20. Authenticity of signatures and indorsements on negotiable instruments. In every action, brought upon a negotiable instrument, the authenticity of any signature or indorsement thereon shall be taken to be admitted unless the same is put in issue by the pleadings

Source R S 2 98-3, L 1914, c 168, p 319, §1 [1924 suppl §70-20a], suppl to L 1900, c 150, p 362

3:43-21. Record used to refresh memory. When a notary public or any other person authorized to protest instruments under the laws of this state, is called upon to testify concerning a protest made by him, he may, to refresh his memory, refer to the record thereof kept by him as required by law.

Source R S 2 98-6, Rev 1877, p 899, §12 [C S p 3760, §207]

3:43-22. Certificate of protest as evidence.

The certificate of a notary public of this state, or of any other state of the United States, under his hand and official seal accompanying any bill of exchange or promissory note which has been protested by such notary for nonacceptance or nonpayment, shall be received in all the courts of this state as competent and conclusive evidence of the official character of such notary, and also of the facts therein certified as to the presentment and dishonor of such bill or note and of the time and manner of giving or sending notice of dishonor to the parties to such bill or note, provided the party offering the same shall have annexed a copy of such certificate to his complaint or other pleading

If, however, the opposite party shall give notice with his answer or other pleading or when the action is brought in courts where formal pleadings are not required, by filing a notice on the return day of the summons, that he intends to dispute the fact of due presentment or notice of dishonor, then such certificate shall not be made evidence by this section, but the facts necessary to fix the liability of such party shall be established by proof as heretofore

Source R S 2 98-8, L 1900, c 150, p 367, §21 [C S p 2227, §21]

3:43-23. Presumption of publication of ordinance according to law. Whenever any ordinance of any municipality may come in question or is produced in evidence, the publication thereof according to law shall be presumed to have been had until the contrary is shown.

Source R S 2 98-15, L 1894, c 352, p 539, §2 [C S p 5742, §38b], suppl to L 1891, c 22, p 33, L 1899, c 169, p 379, §20 [C S p 5579, §20], as am L 1915, c 185, p 348, §1 [1924 suppl §216-20]; L 1906, c 155, p 291, §8 [C S p 3493, §147], as am. L 1921, c 155, §2(8), p 432 [1924 suppl §136-147]

3:43-24. Printed statute books from foreign jurisdictions as evidence. Statute books and printed laws, printed by authority of any state of the United States or foreign country or province or subdivision thereof, shall be received as evidence of the public laws thereof.

When offered in evidence, the court may determine whether such book or printed law was printed under proper authority, by inspection, testimony or its own knowledge. Rejection thereof by the court shall be final, unless, on appeal, it is proved that such book or printed law is received as a statute book or pamphlet containing the session laws of said state of the United States, in the courts thereof, or in the case of a foreign country or province or subdivision, that such book or printed law is what it purports to be. Admission thereof shall not be cause for reversal, unless it be shown that the statute offered in evidence, or some material part thereof, was not in force in such state or foreign country or province or subdivision thereof at the time of the transaction or matter to which the same is offered as pertinent or material

Source R S 2 98-17, L 1900, c 150, p 369, §§24, 25 [C S p 2228, §§24, 25].

3:43-25. Judicial reports judicially noticed. The reports of judicial decisions of other states of the United States and foreign countries may be judicially noticed as evidence of the common law of such states or countries, and the judicial construction of the statutes or laws thereof and the usual printed books of such reports shall be plenary evidence of such decisions

Source R S 2 98-18, L 1900, c 150, p 370, §26 [C S p 2229, §26]

3:43-26. Business records as evidence. A record of an act, condition or event, shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

Source L 1949, c 124, p 494, §2

3:43-27. "Business" defined. The term "business" as used in this rule shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

Source L 1949, c 124, p 494, §1

Note of Reporter Title of act

An act concerning evidence, and supplementing subtitle 11 of Title 2 of the Revised Statutes L 1949, c 124, p

3:43-28. Blood grouping tests in proceedings involving child's parentage; examination of experts. Whenever it is relevant to the case of the prosecution or the defense in a proceeding involving parentage of a child, the trial court, by order, may direct that the mother, her child and the defendant submit to 1 or more blood grouping tests to determine whether or not the defendant can be excluded from the probability of being the father of the child. The testimony of experts to the result of the test shall be receivable in evidence, but only in cases where definite exclusion of parentage of the defendant is indicated. The tests shall be made by duly qualified physicians, to be appointed by the court. Such experts shall be subject to cross examination by both parties after the court has caused them to disclose their findings to the court or to the court and jury. Whenever the court orders such blood grouping tests to be taken and 1 of the persons thus directed shall refuse to submit to such tests, such fact shall be disclosed upon the trial in the discretion of the court.

Source L 1939, c 221, p 619, §1

Note of Reporter Section 3 of the Act of 1939 provided that the act should take effect immediately.

Title of act

An act concerning evidence and witnesses, and supplementing subtitle 11, of Title 2, of the Revised Statutes L 1939, c 221, p 619

3:43-29. Civil actions involving parentage or identity; blood grouping tests; examination of experts; depositions; costs. Whenever it shall be relevant in a civil action to determine the parentage or the identity of any child or other

person, the court, by order, may direct that any party to the action and the person whose parentage or identity is involved submit to 1 or more blood grouping tests, to be made by duly qualified physicians under such restrictions and directions as the court or judge shall deem proper. Whenever such test is ordered and made, the testimony of the experts to the results thereof, subject to cross examination as in section 1, shall be receivable in evidence, but only in cases where definite exclusion is indicated. The order for such blood grouping tests also may direct that the testimony of such experts and of the persons so to be examined be taken by deposition. The court shall determine how and by whom the costs of such examinations shall be paid.

Source L 1939, c 221, p 619, §2

3:43-30. Value of real estate. In any action for the acquisition or sale of land, or any interest or interests therein, or on review of the assessment for taxes of any real property, any person offered as a witness in any such action or proceeding shall be competent to testify as to sales of comparable land, contiguous or adjacent to the land in question, or in the vicinity or locality thereof, from information or knowledge of such sales, obtained from the owner, seller, purchaser, lessee or occupant of such comparable land, or from information obtained from the broker or brokers who negotiated or who are familiar with or cognizant of such sales, which testimony when so offered, shall be competent and admissible evidence in any such action.

This rule shall not be construed to apply to any action instituted by any individual or private corporation authorized to take property for public use where compensation must first be made to the owner thereof.

Source R S 2 101-1, L 1931, c 229, p 577, §1, suppl to L 1900, c 150, p 362

3:43-31. Finding of presumed death under federal statute as presumptive evidence. A written finding of presumed death, made by the secretary of war, the secretary of the navy, the United States maritime war emergency board, or other officer or employee of the United States authorized to make such finding, pursuant to the federal missing persons act, as now or hereafter amended, or a duly certified copy of such finding, shall be received as presumptive evidence of the death of the person therein found to be dead, and the date, circumstances and place of his disappearance.

Source L 1945, c 46, p 109, §1.

Note of Reporter. Title of act

An act to provide for the receiving as evidence in any court, office or other place in this state, official findings, records, reports, or certified copies thereof, of death, presumed death, missing or other status, of any person, issued by the secretaries of war and navy, the United States maritime war emergency board, and other federal officers and employees. L 1945, c 46, p 109

3:43-32. Official record or report as evidence that person is missing, interned, etc. An official written report or record, or duly certified copy

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thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by such board or by any officer or employee of the United States authorized by the act referred to in section 1 or by any other law of the United States to make same, shall be received as presumptive evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, as the case may be

Source L 1945, c 46, p 110, §2

3:43-33. Signature and certification deemed prima facie evidence. For the purposes of Rules 3 43-30 and 3 43-31 any finding, report or record, or duly certified copy thereof, purporting to have been signed by such board, or by such an officer or employee of the United States, as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his authority so to certify.

Source L 1945, c 46, p 110, §3

3:43-34 Photographic copies or positive prints; documents or records of banks, savings or building and loan associations and insurance companies; admissibility. Any photographic copy, or a positive print thereof if the same be a negative, of any of the documents or records of any bank, savings bank, national banking association having its principal office in this state, savings and loan association, building and loan association, or of any insurance company organized or existing under the laws of this state, which shall be deemed to be an original counterpart of the original thereof by virtue of the provisions of any court rule or any statute of this state, shall be as admissible in evidence as the original thereof, whether or not the original shall have been destroyed, for all purposes in all courts and places

Source L 1941, c 40, p 113, §1, as am L 1949, c 155, p 538, §1, L 1950, c 104, p , §1

3:43-35. Judicial notice of foreign law; presumption as to common law. Whenever the common or statute law of any state, territory or other jurisdiction of the United States is pleaded in an action, the court shall take judicial notice thereof. In the absence of such pleading, it shall be presumed that the common law of such state, territory or other jurisdiction of the United States is the same as the common law as interpreted by the courts of this state

Source L 1941, c 81, p 193, §1, as am L 1942, c 104, p 365, §1

Note of Reporter Section 8 of the Act of 1941 repealed all inconsistent acts and parts of acts
Title of Act

An act providing for uniform judicial notice of for-

eign law, and supplementing chapter 98 of Title 2 of the Revised Statutes L 1941, c 81, p 193

3:43-36. Information of the court. The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

Source L 1941, c 81, p 193, §2

3:43-37. Ruling reviewable. The determination of such laws shall be made by the court and not by the jury, and shall be reviewable.

Source L 1941, c 81, p 194, §3

3:43-38. Evidence as to laws of other jurisdictions. Whenever the common or statute law of any state, territory or other jurisdiction of the United States is pleaded in an action, any party to such action may introduce any admissible evidence of such law

Source L 1941, c 81, p 194, §4, as am L 1942, c 104, p 365, §2

3:43-39. Foreign country. The law of a jurisdiction other than those referred to in Rule 3 43-35 shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice

Source L 1941, c 81, p 194, §5

3:43-40. Stenographic reporter in trials on request. In all trials had before any court of this state, where not otherwise provided for by law, the court shall, upon request of either party to the trial and at the expense of the requesting party, designate a competent stenographic reporter, who shall be duly sworn, to report verbatim the trial excepting the arguments of counsel

3:43-41. Transcription of record of trial; compensation. The stenographer appointed pursuant to Rule 3 43-40 shall, upon request, transcribe into typewriting the record of the trial upon payment to him therefor at the rate of 10 cents per folio

Note of Reporter Superior court Rule 3 44-1 provides the means by which the contents of official records may be proved but fails to state the effect to be given to the proof. The rule states the manner in which the record or an entry may be evidence, "when admissible for any purpose". In order to determine the purpose for which the record or its contents may be admissible, we still must resort to the present statutory provisions contained in chapter 98 of Title 2

These statutes are now being changed into proposed court rules to be added to superior court Rule 3 44

3:43-42. Waiver of formal proof of bills. Where, in any civil action, a bill for the repair of an automobile or a bill for medical, surgical or hospital services shall be specified in a pleading as an item of damages, setting forth the name of the creditor, the amount of the bill, and the dates between which the repair work was done or services rendered, and where the opposing party shall not demand formal proof of such bill, either in his answering pleading or at the pre-trial conference, such formal proof shall be deemed to have been waived, and the

party pleading the bill as an item of damages shall not be required to adduce any proof of the said bill other than the submission of a bill corresponding in all respects to the bill set forth in the pleading

If the opposing party shall demand formal proof of the said bill and if the bill, as alleged in the pleading, shall be proved as an item of damages, the party demanding the formal proof shall pay the expenses incurred in the making of such formal proof.

3:44-5. Original instruments produced; notice to adverse party. Any party may give, to any opposite party or his attorney at least 10 days before the time appointed for the trial, notice in writing that such opposite party will be required to produce, at such trial, the original instead of the record or transcript of the record of any instrument or of any copy of any instrument recorded or registered in any public office of this state pursuant to law, which he may think proper to offer or introduce in evidence at such trial, and, after the giving of such notice, no record or transcript of the record of any such instrument or of any such copy of any instrument shall be received in evidence, until proof shall be made, satisfactory to the court before whom such record or transcript is offered, that the original instrument has been lost or unintentionally destroyed, or that after diligent search and inquiry made, such party has been unable to find the original or that such original is without the control of such party and that the production thereof cannot be compelled by due process

Source R S 2 98-26, L 1934, c 221, p 520, §7, suppl to L 1900, c 150, p 362

3:44-6. Certifications, notations or records of time of record, etc., of instruments as prima facie proof of date of record, etc., thereof. The certification or notation made, pursuant to law, by any public officer upon any instrument or document which shall have been recorded, registered or filed in his office, setting forth the date and time of day when such instrument shall have been so recorded, registered or filed, or any record kept by any public officer pursuant to law of the date and time of day of the recording, registering or filing of any instrument or document in his office, shall be received in evidence, as prima facie proof of the date and time of day of the recording, registering or filing of such instrument

Source R S 2 98-27, L 1934, c 221, p 520, §8, suppl to L 1900, c 150, p 362

3:44-7. Records and certified transcripts of instruments as evidence; exceptions. The record of any instrument or of a copy of any instrument recorded in any public office of this state pursuant to law, or a transcript of such record, or the rerecord of any instrument which has been rerecorded in any public office of this state pur-

suant to law, or a transcript of such rerecord, shall be received in evidence and be as good, effectual and available in law as if the original instrument were then and there produced and proved, except that the record or a transcript of the record, or the rerecord or a transcript of such rerecord of any instrument shall not be received in evidence

a When the instrument has been recorded in the office of any county clerk or register of deeds and mortgages of any county, either as an ancient deed or after the lapse of 10 years from the date of the acknowledgment or proof thereof (the original whereof is required by law to be filed in such office), unless it shall be proved to the satisfaction of the court that the original instrument has been destroyed or lost or has been removed from the office of the clerk or register wherein by law it is required to be kept, and that it cannot be produced; or

b When the original of such instrument is required to be produced under the provisions of Rule 3 44-5.

Source R S 2 98-23, L 1934, c 221, p 518, §4, suppl to L 1900, c 150, p 362

3:44-8. Certificates of acknowledgment or proof of instruments as evidence of execution thereof. If any instrument heretofore made and executed or hereafter to be made and executed shall have been acknowledged, by any party who shall have executed it, or the execution thereof by such party shall have been proved by 1 or more of the subscribing witnesses to such instrument, in the manner and before 1 of the officers provided and required by law for the acknowledgment or proof of instruments in order to entitle them to be recorded, and, when a certificate of such acknowledgment or proof shall be written upon or under, or be annexed to such instrument and signed by such officer in the manner prescribed by law, such certificate of acknowledgment or proof shall be and constitute prima facie evidence of the due execution of such instrument by such party and such instrument shall be received in evidence in the same manner and to the same effect as though the execution of such instrument by such party had been proved by other evidence

Source R S 2 98-20, L 1934, c 221, p 517, §1, suppl to L 1900, c 150, p 362

3:44-9. Certification or authentication of instruments not acknowledged or proved; effect as evidence. If any instrument heretofore made and executed or hereafter to be made and executed, although not acknowledged or proved, shall have been certified or authenticated, as to the execution thereof by any party thereto, in any manner which may be prescribed by law in order to entitle such instrument to be recorded in any public office of this state without a certificate of acknowledgment or proof thereof, such certification or authentication shall be and constitute prima facie evidence of the due execution of such

instrument by such party and such instrument shall be received in evidence, in the same manner and to the same effect as though the execution of such instrument by such party had been proved by other evidence

Source, R S 2 98-21, L 1934, c 221, p 518, §2, suppl to L 1900, c 150, p 362

3:44-10. Public records of foreign states, United States departments and possessions; copies. Any public record of any foreign state or territory, province, county or city, or of any court therein, or any copy thereof, which is admissible in such state, territory, province, county or city, or in any court therein, to prove the facts therein contained, or any duly certified public record of any department of the United States government or of any federal court which is admissible in any federal court or by virtue of any federal statute to prove the facts therein contained, shall be admitted in evidence and shall be evidence of the facts therein contained, to the same extent as though the original paper or papers, of which the record thereof is a copy, had been produced and proved

Source L 1941, c 116, p 261, §1, R S 2 98-19, L 1900, c 150, p 370, §27 [C S p 2229, §27], as am L 1912, c 260, p 465, §1 [1924 suppl §70-27].

3:44-11. Exemplifications and records of certain foreign deeds or writings as evidence. The exemplification of any deeds or writings relating to estates, real or personal, within the state of New Jersey, proved and certified under the city seal of London or Edinburgh, in the kingdom of Great Britain, or under the seal of the city of Dublin, in the kingdom of Ireland, or under the great seal of any British colony in America, prior to July 4, 1776, and any of the public books of records or registers of the province of New Jersey, or of either of the divisions thereof, prior to that date, shall be received in evidence and shall be esteemed as sufficient as if the originals were then and there produced and proved

Source R S 2 98-22, L 1934, c 221, p 518, §3, suppl to L 1900, c 150, p 362

3:44-12. Entries or abstracts of mortgages and transcripts thereof as secondary evidence. An entry or abstract of any mortgage and of the certificate of the acknowledgment or proof thereof, heretofore or hereafter made in any book kept for the purpose of registering mortgages, by any county clerk or register of deeds and mortgages, pursuant to law, or a transcript of such entry or abstract, shall be received as secondary evidence, in the same manner as records and transcripts of recorded instruments are received and shall be proof of the facts therein stated

Source R S 2 98-25, L 1934, c 221, p 519, §6, suppl to L 1900, c 150, p 362

3:44-13. Copies of record of protest as evidence. If it appears that the notary or other officer of this state by whom any bill of exchange or promissory note was protested has died or removed from the state or, after diligent inquiry,

his place of residence cannot be discovered, the record deposited in the county clerk's office, as required by section 7 5-5 of the title Bills, Notes and Checks, or a copy thereof shall be received as competent evidence of the matter contained in such record

Whenever the register or other book of any notary public appointed and qualified under the laws of any state of the United States containing a record of the official acts of such notary public by him done in pursuance of his office shall have been, or shall hereafter be, in pursuance of the law of such state, by reason of the death, removal or other disability of such notary public, deposited in the office of the clerk, prothonotary or recorder of deeds of the city, town or county in which the said notary public resided at the time of his acting as such notary public, a copy of such record or of any part thereof respecting the protesting of any note or bill of exchange protested by such notary public, and the time when, place where and upon whom demand of acceptance or payment was made, with a copy of the notice of nonacceptance or nonpayment (if a copy of such notice shall appear on said record), how the notice of nonacceptance or nonpayment was served, and the time when, or if sent, in what manner, and the time when, and to whom, shall be held and received as conclusive evidence of the facts therein recited, and also of the official character of said notary public, and whenever it shall appear from such record that the said note or bill of exchange had been protested for want of acceptance or payment thereof, and that the said notary public making such protest had duly notified the drawer or indorsers, by mail, of the demand of payment or acceptance and refusal thereof, without specifying the names or the post-office address of such drawer or indorsers, the copy of such record, shall be held and received in all courts of this state as conclusive evidence that the drawer and indorsers of such note or bill of exchange were duly notified of such demand and refusal, provided, that the party offering the same shall have annexed a copy of such record to his complaint or other pleading, or shall, at least 20 days before the trial of any cause where such record is to be offered in evidence, serve upon the opposite party or his attorney a notice that he intends to offer in evidence upon said trial such record or a copy thereof, setting forth the same; and provided further, that any party may contradict by other evidence any of the matters appearing upon the said record in all cases where such party shall give notice of his intentions so to do within 10 days after a service of the notice mentioned in the first proviso of this paragraph

Source R S 2 98-7, L 1900, c 150, pp 367, 368, §§21, 22 [C S p 2227, §§21, 22]

3:44-14. Certified copies of writs, pleadings and court orders as evidence. Transcripts or copies of pleadings in the courts of this state,

or of judgments, orders, decrees or writs of any kind, or the record thereof made or filed in any such court, shall be admitted in any court of this state as evidence of the facts, matters and things therein set forth to the same extent as though the original thereof had been produced and proved

Source R S 2 98-10, L 1909, c 153, p 228, §1 [C S p 2229, §27a], suppl to L 1900, c 150, p 362

3:44-15. Transcripts of proved, registered or recorded wills and letters of administration or guardianship as evidence. Transcripts of wills regularly proved and registered or recorded in the office of the clerk of the superior court or in the office of the surrogate of any county of this state, shall be received in evidence in all the courts of this state and be as good and effectual as if the books of registry or record were produced and proved, and shall be competent evidence relating to the title to any estate, real or personal, devised or bequeathed by such wills, the same as if the original wills were produced and proved by the attesting witnesses

Transcripts of wills admitted to probate or of letters of administration or guardianship granted by the superior court, which have been or shall be filed in the office of and recorded by the surrogate of the county in which the testator or intestate resided at the time of his death or in which a ward may reside as required by statute, shall be received in evidence in all the courts of this state, and shall have the same force and effect as if certified by the clerk of the superior court

Source R S 2 98-11, L 1898, c 234, pp 716, 720, §§5, 20 [C S pp 3815, 3819, §§5, 20], L 1900, c 148, p 347, §8 [C S p 1723, §83]

3:44-16. Copies of motor vehicle records. Copies of any act, rule, order or decision made by the director of motor vehicles, and of any paper filed in his office shall be evidence in like manner and with equal effect as the originals

All transcripts of the records of the division of motor vehicles as to the names of owners of motor vehicles and as to the holders of licenses to operate motor vehicles made as hereinafter directed shall be received as evidence in any court. Such transcripts shall be copies of the original records made or copies of the record thereof as recorded by the clerk or other officer of the division of motor vehicles and such transcripts shall be received in all courts as prima facie evidence of the matters and facts therein stated

Source R S 2 98-12, L 1921, c 208, p 645, §4 [1924 suppl §135-52], as am L 1926, c 148, p 231, §2, L 1931, c 171, p 349, §2, L 1927, c 209, p 396, §1, 2, suppl to L 1900, c 150, p 362, R S 2 98-13, Rev 1877, p 1137, §5 [C S p 5060, §5], Rev 1877, p 1137, §7 [C S p 5060, §7], suppl to Rev 1877, p 1137

3:44-17. Certified copies of certain surveys as evidence. Copies of all surveys and other writings of record in the office of the surveyor general of the western or eastern division of this state, or the commissioner of economic development shall be received in evidence

3:44-18. Certified copies and records of returns of vital statistics. Any original certificate of marriage, marriage license and consent to the marriage of minors, or any part thereof, and any copy of the record of any marriage, any original certificate of birth or death, or any copy thereof, or any copy of the record thereof, any transcript of return of death, marriage or birth, made by any person according to law, to any officer or board empowered by law to receive the same or of the record of such return, such transcript being a copy of the return as originally made or a copy of the record thereof as recorded according to law, when such transcript shall be signed by the officer required by law to return or record the same as the case may be, shall be received as prima facie evidence of the facts therein stated in all courts and places

Source R S 2 98-14, L 1900, c 150, p 370, §§28, 29 [C S p 2229, §§28, 29], L 1909, c 109, p 174, §10 [C S p 211, §10], L 1912, c 199, p 313, §15 [1924 suppl §123-33], L 1920, c 99, p 211, §29 [1924 suppl §22-19C(29)], L 1921, c 89, p 150, §1 [1924 suppl §123-44], suppl to L 1912, c 199, p 306

3:44-19. Copies and books of ordinances as evidence. The book of ordinances kept by the clerk of any municipality, copies of any ordinances of any municipality or an authorized copy of municipal ordinances in book form shall be received in all courts and places as fully as if the original ordinance were produced and offered in evidence

Source R S 2 98-16, L 1894, c 352, p 539, §2 [C S p 5742, §38b], suppl to L 1891, c 22, p 33, L 1899, c 169, p 379, §20 [C S p 5579, §20], as am L 1915, c 185, p 348, §1 [1924 suppl §216-20], L 1917, c 152, art X, p 346, §3 [1924 suppl §*136-1003]

3:44-20. Municipal records; copies as evidence; signature authenticated. A copy of any record or part thereof in the office of the collector, or other officer charged by law with collecting municipal liens, shall be received in evidence in all courts as if the original record, or part thereof, were produced and proved

Source R S 2 98-16 1, L 1921, c 130, p 256, §3 [1924 suppl §208-444a(54)] (amendment), suppl to L 1918, c 237, p 883

3:44-21. Public records of foreign states or territories; United States departments or courts; copies; rates, etc., filed with interstate commerce commission; federal communications commission. Any public record of any foreign state or territory, province, county or city, or of any court therein or any copy thereof, which is admissible in such state, territory, province, county or city, or in any court therein, to prove the facts therein contained, or any duly certified public record of any department of the United States government or of any federal court which is admissible in any federal court or by virtue of any federal statute to prove the facts therein contained, shall be admitted in evidence in the courts of this state, and shall be evidence of the facts therein contained, to the same extent as though the original paper or papers, of which

the record thereof is a copy, had been produced and proved, and provided, further, that printed copies of schedules and classifications and tariffs of rates, fares and charges, and supplements thereto, filed with the interstate commerce commission, which show respectively an interstate commerce number, which may be stated in abbreviated form, as I C C No . . . , and an effective date, and tariffs, rates, rules and supplements thereto of companies subject to the supervision of the federal communications commission may be received in evidence and shall be presumed to be correct copies of the original schedules, classifications, tariffs or supplements.

3:45-5. Disobedience; penalties. If any person on whom lawful process shall have been duly served to testify, depose or give evidence concerning any cause or matter and to whom shall have been paid or tendered at the time of such service, 50 cents if he is to attend in the county, and \$1.00, if he is to attend out of the county, shall not appear according to the command of such process, having no lawful or reasonable excuse for such default, he shall

a For each offense forfeit to the aggrieved party a sum not exceeding \$50.00 to be ascertained and adjudged by the court in which he was subpoenaed to attend; and

b Pay to the aggrieved party damages equivalent to the loss sustained by the want of his evidence, to be recovered in an action at law with costs, and

c Be punishable for contempt of the court out of which the process issued

Source R S 2 97-16, L 1900, c 150, p 365, §12 [C S p 2224, §12]

3:45-6. Witness from another state summoned to testify in this state. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this state he shall be tendered the sum of 10 cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and \$5.00 for each day that he is required to travel and attend as a witness. A witness who has appeared in ac-

cordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

Source L 1941, c 88, p 201, §3

3:45-7. Privilege of witness from arrest during attendance. A witness shall be privileged from arrest in all civil actions, and no other, during necessary attendance at court or other place, required by subpoena previously duly served, and during his going to and returning therefrom, allowing 1 day for every 30 miles from his place of residence.

Any arrest made in violation of the privilege given by this rule shall be a contempt of the court out of which the subpoena issued, and the court, or any judge thereof, may, by an order, forthwith discharge the witness from arrest.

Source R S 2 97-18, L 1900, c 150, p 365, §14 [C S p 2224, §14]

3:45-8. Exemption from arrest and service of process. If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not, while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

3:53-1. Reference. No reference to the hearing of a matter shall be made to any person except under extraordinary circumstances or to advisory masters in matrimonial causes or as to matters customarily heard by a standing master appointed by the supreme court.

Note of Reporter. It has been supposed that the rule forbidding references except in extraordinary circumstances did not apply to matrimonial causes.

3:53-5. (e) Draft report. Before filing his report a master may submit a draft thereof to attorneys for all parties for the purpose of receiving their suggestions.

3:54. Search fees. In any action for the foreclosure of a mortgage or partition and sale of realty the clerk may tax as a part of the taxable costs all such legal fees and charges as may have been paid or incurred in procuring searches against or in relation to the title of the premises. If authorized by order of the court, there shall also be included all such searches as may have been incurred for searches required for unpaid taxes or municipal liens and other searches required to enable the officer making public sale to insert in his advertisements and conditions of sale a description of the estate or interest to

be sold and the defects in title and liens or encumbrances thereon, as authorized by law

Fees for searches shall not be taxed, unless prior to the taxing thereof, there be filed with the papers in the action an abstract of the searches made, which, in partition actions, shall set forth the date and manner of the commencement of the cotenancy, and, in foreclosure actions, shall set forth the date of the mortgage, and shall shortly indicate precisely what searches were made and for what purpose made, together with an affidavit of the plaintiff or his attorney, which shall set forth an itemized statement of the fees and charges for which taxation is asked, and which shall include only such fees and charges as were actually and necessarily paid or incurred for the purpose of the action. Without the order of the court, no search fees shall be certified or taxed for searches respecting the state of the title or encumbrance thereon prior to the commencement of the cotenancy in partition actions, or prior to the date of the mortgage in foreclosure actions. The abstracts of search shall remain permanently upon the files

Note of Reporter There are at present 2 statutes which permit search fees to be taxed. R S 2 65-32 as to foreclosure actions and R S 2 71-46 as to partition actions. Both of these sections are to be repealed. This rule is based upon the statutes and the former chancery Rules 145 and 146. See, *Keiler v Bunn*, 84 N J E 519 (Ch 1915). Searches are essential in foreclosure and partition actions and plaintiff should be reimbursed for the cost of the same. At present the taxed costs include search fees

3:54-5. Final judgment without process or pleadings; agreed statement. In any case other than one involving the marital status of the parties or affecting the rights of an infant or incompetent, judgment final may be entered without process or pleadings upon the filing of an agreed statement of the facts and matters in difference between the parties. The parties may agree upon the judge who shall hear and determine the case.

Renumber Rules 3 54-5 and 3 54-6, so as to make them respectively 3 54-6 and 3 54-9.

Note of Reporter This rule is derived from R S 2 27-246 which was applicable to the law courts. Divorces should of course not be granted on the basis of an agreed statement of facts. The statute by its terms did not prevent an action being brought thereunder which affected the rights of an infant or incompetent, but it seems inappropriate to allow a guardian ad litem for an infant or incompetent to stipulate the "foundational facts". *Anderson v Anderson*, 133 N J Eq 311. It has been held that R S 2 27-246 did not apply to prerogative writ proceedings, but there is no good reason for continuing that practice. *Advance Development Corp v Mayor of Jersey City*, 105 N J L 234 (E & A 1928).

In accordance with R S 2 27-246 the parties are permitted to agree upon a judge to decide the case. There seems to be no objection to allowing the parties to select a judge, if they agree. It has been suggested that where a case is heard without process or pleadings, general appearances should be filed, but it would seem that these appearances will show up in the stipulation.

3:54-6. Costs. Except when express provision therefor is made either in a statute or in these rules or when a wife does not prevail in a divorce, annulment or maintenance action, costs

shall be allowed as of course to any prevailing party unless the court otherwise directs. The action of the clerk in taxing the costs may be reviewed by the court on motion. Where the clerk of the court signs a judgment, the amount of costs shall be inserted therein.

Note of Reporter R S 2 27-402 provides that in an action for replevin, ejectment or an action sounding in tort where there are several defendants and a verdict is rendered in favor of 1 or more of them, every defendant so acquitted shall recover his costs as though all had been acquitted, unless the judge trying the action shall immediately, in open court, certify upon the record that there was reasonable cause for making such person or persons defendants in the action. It would seem that the provision should be made applicable to any case in which there is more than 1 party plaintiff or defendant, leaving it to the court, pursuant to the rule, to make any other direction which justice demands. See 20 C J S 346 and 349.

The second change in this rule is made so as to include the provision now found in R S 2 27-423, under which, in an action at law, the amount of taxed costs must be inserted in the judgment. It would seem that this is a salutary provision, at any event where the clerk signs the judgment. However, when a judge signs an order or judgment he would rarely know the amount of costs, and hence the practice at law has been to insert the amount of costs at the foot of the order, perhaps this practice should be preserved and made applicable to chancery cases too, and the above amendment modified accordingly. Rule 3 58 provides "The entry of the judgment shall not be delayed for the taxing of costs".

3:54-7. Counsel fees. No fee for legal services shall be allowed in the taxed costs or otherwise, except:

a in a matrimonial action. In such an action the court in its discretion may make an allowance to be paid by any of the parties to the action, charging, if it deems it to be just, any party successful in the action, but no allowance shall be made as to nonmatrimonial issues joined with matrimonial issues.

or b out of a fund in court. The court in its discretion may make an allowance out of such a fund, but no allowance shall be made as to issues triable of right by a jury.

or c in an uncontested action for the foreclosure of a mortgage. The allowance shall be calculated as follows: on all sums adjudged to be paid in such an action amounting to \$5,000 or less, at the rate of 2%, upon the excess over \$5,000 and up to \$10,000 at the rate of 1%, and upon the excess over \$10,000 at the rate of one-half of 1%.

or d in an action for the probate of a will or codicil. If probate be refused, the court may order the costs and expenses of the litigation to be paid by the proponent of the will or codicil or out of the estate of the decedent. If probate be granted, the court shall order the contestant to pay the costs and expenses, unless it shall appear to the court that the contestant had reasonable cause for contesting the validity of the will or codicil, or shall not have offered at the trial any evidence other than the subscribing witnesses to the will or codicil. If it shall appear to the court that the contestant had reasonable cause for contesting the validity thereof,

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the court may order that the costs and expenses of the litigation, both of the proponent and of the contestant, be paid out of the estate of the decedent

or e in an action for wages or pay brought by a factory employee discharged without notice If in such an action he shall recover judgment for such wages or pay, or for a larger amount than was rendered him in case tender was made, he shall be allowed as part of the costs of suit, an attorney's fee to be fixed by the court, and in case defendant shall appeal without success, an additional attorney's fee to be fixed by the court shall be allowed as part of the costs of appeal

or f in an action by a woman or minor worker for recovery of a minimum fair wage under R S 34 11-56 If in such an action judgment is recovered by or on behalf of a woman or minor worker, it shall include such reasonable attorney's fees as may be allowed by the court

or g in an action brought on the bond of a contractor given pursuant to section 2A 60-207 of the statutes The court may grant a reasonable attorney's fee to the prevailing party

or h upon the discharge of a mechanic's notice of intention filed pursuant to section 2A 60-117 of the statutes When the court orders the discharge, it may require the one failing or refusing to make the discharge to pay a reasonable attorney's fee

or i as provided by these rules

Note of Reporter 1 3 54-7(d) is taken from R S 3 2-51

2 3 54-7(e) is taken from R S 34 11-29

3 3 54-7(f) is taken from R S 34 11-56

4 3 54-7(g) finds its ancestry in R S 2 60-210, which has been deleted from the revision 2A 60-210 It is appropriate material for a rule Whenever a bond is given to protect materialmen and laborers furnishing material and labor in connection with a public improvement, the surety is not obligated to pay interest on the claim until 80 days after final acceptance of the improvement *Monahan v Seaboard Surety Co*, 126 N J L 148 (E & A 1940) Acceptance may be delayed for a long time This places an unreasonable burden on claimants under the bond Bonding companies will hold up payment to such claimants unless there is some deterrent to insisting upon a civil action If the loss of a civil action may impose attorney's fees upon them, they may settle before action

5 3 54-7(h) was taken from R S 2 60-174, now 2A 60-158 Often persons file mechanics' notices of intention without any just reasons and merely to tie up payments from mortgagees to the owner Generally the persons filing notices of intention are entitled to participate in the distribution of funds from a mortgagee 2A 60-130(c) If claimants may file notices indiscriminately and without being subject to any penalty when the notices are not voluntarily discharged, such claimants will refuse to file certificates of satisfaction The rule will prevent many unnecessary motions to discharge such notices

3:54-7(c). Add at end of paragraph When the amount due does not exceed \$300 the allowances shall be one-half that provided herein

Note of Reporter By R S 2 65-29 to become R S 2A 65-29 Fees of clerk etc are fixed at one-half when the amount involved is less than \$300 Provisions as to fees of attorneys have been deleted because procedural and covered by Rule 3 54-7(c) The legislative purpose in reducing fees should be followed

See *Prudence Bonds Corporation v Zawojski*, 95 N J E 181 (Ch 1923)

Taylor v Smith, 133 N J E 69 (Ch 1943)

As a practical matter, even the full allowance of 2% will not suffice But if all others are required to cut down their allowances it would not seem equitable to permit attorneys to collect the full allowance

3:56A-1. Warrant of attorney. No judgment by confession shall be entered upon a warrant of attorney which is included in the body of a bond or any instrument for payment of money

Note of Reporter In effect this statute is merely a regulation of practice See *Hendrickson v Fries*, 45 N J L 555

3:56A-2. Procedure to confess judgment. Any attorney at law or other person confessing judgment in an action brought or to be brought on a bond or any instrument for the payment of money shall produce to the court (a) his warrant therefor, (b) the bond or instrument, (c) affidavit of plaintiff, his attorney or agent, having attached a copy of the warrant and of the instrument and stating the true consideration for the liability expressed in the instrument, the amount then justly due to the plaintiff, and that the judgment is not confessed with a fraudulent intent or to protect the property of the defendant from his creditors

Upon production thereof and the filing with the court of the affidavit, the court shall on motion without notice order entry of a judgment for such amount as it shall find to be due

Note of Reporter This covers R S 2 27-270, 271, 272 and 275

3:56A-3. Warrant executed more than 10 years prior. No judgment shall be entered on any warrant of attorney more than 10 years after the execution thereof, except on motion after notice to the person liable on the bond or other instrument and proof in such form as the court may require, in addition to that specified in Rule 3 56A-2, that (a) the warrant was duly executed, (b) the person liable is living and duly notified of the application, (c) the debt or a part thereof is unsatisfied

Note of Reporter This covers R S 2 27-273

3 57-1. Acknowledgment of satisfaction or warrant to satisfy required. When a party in whose favor a judgment is entered or docketed, his representative, including the guardian of an infant, or any assignee or anyone entitled to receive satisfaction, shall have received satisfaction thereof, he or his attorney shall either enter an acknowledgment of satisfaction on the record of the judgment, or shall deliver to the party making satisfaction or his representative or attorney or to the clerk of the court a warrant duly acknowledged or proved, directing and authorizing the clerk to satisfy the same of record Upon the filing of a warrant, the clerk shall enter satisfaction on the record Any such warrant shall set forth the book and page wherein the judgment is recorded or docketed

Note of Reporter This rule replaces R S 2 27-296, 297, 298, 303, 304 and 306

3:57-2. Satisfaction of judgment by order of court. If a party entitled to satisfaction of a judgment has received satisfaction and fails to enter satisfaction on the record or to deliver a warrant to satisfy as required by rule 3 57-1, the court may on motion of the party making satisfaction, and after notice, order satisfaction of the judgment to be entered of record, with costs to be paid by the party receiving satisfaction

Note of Reporter. This replaces R S 2 27-313

3:57-3. Satisfaction of judgment when payment made to sheriff. When any execution issued on any judgment is returned fully paid or satisfied by the sheriff or other officer to whom it was directed, the clerk shall enter satisfaction on the record.

Note of Reporter. This proposed rule replaces R S 2 27-302 and 2 27-305

3:57-4. Recourse by some judgment debtors against other judgment debtors. Where a judgment is taken against 2 or more persons, satisfaction of the judgment by 1 of them liable thereon secondarily, or equally with any other, shall not discharge or satisfy the judgment except as to him. The court may on his motion, after notice to the other persons in interest, excluding the judgment creditor, and upon terms, allow him the full benefit and control of the judgment and any outstanding execution, or may issue new execution, for the purpose of compelling payment or contribution from any party liable to him therefor.

Note of Reporter. The above rule takes the place of the second sentence of Rule 3 69-2, which is contained in brackets above. The rule is proposed in order to cover the second sentence of R S 2 27-309 and to make it clear that the rule covers a case not only where a party is secondarily liable on a claim but also where he is equally liable with another and is entitled to contribution.

The first sentence of R S 2 27-309 applies only to acknowledgments of satisfaction made directly on the record, which incidentally are much rarer these days than warrants to satisfy. This sentence has been omitted for the reason that the rights of the party rendering the satisfaction are fully protected by the above rule.

3:57-5. Order directing clerk to accept payment of judgment and enter satisfaction. Any court of this state in which a judgment or order for the payment of money is rendered or finally docketed, or which has custody of the records thereof, shall on motion order the clerk of the court to accept payment of the amount thereof, with interest and costs, and, upon receiving payment, to enter satisfaction thereof on the record, if it shall appear upon the motion that

a a tender of the amount due thereon, with interest and costs, has been made to the holder thereof, but he refuses to accept the tender or to execute a satisfaction or warrant in satisfaction therefor, or

b the whereabouts of the holder thereof is unknown and an investigation has been made to discover his whereabouts, the results of which investigation shall be specified on the motion, or

c an appeal is pending or the time limited for taking an appeal has not expired and the moving party intends to take an appeal, or

d a motion for relief from the judgment or order or for a new trial is pending or the time limited for applying for relief from the judgment or order or for a new trial has not expired and the moving party intends to apply therefor; but in this case the moving party shall, with the payment to the clerk, deliver to him a bond in such amount and form and with such sureties as shall be approved by the court, as security for the payment of the costs on such motion for relief or a new trial.

Source. C 2 27-314 and 314 2

Note of Reporter. This rule is derived from C 2 27-314 1 and 314 2. R S 2 27-374 and 375 no longer serve a real purpose. The court would not order the lien of a judgment to be released unless the amount thereof with interest and costs were paid into court, and no one paying that money into court would want a judgment discharged as to its lien when on a similar application he could have it satisfied of record.

3:57-6. Same; terms of motion; effect of payment. A motion pursuant to Rule 3 57-5 shall specify the court in which the judgment or order was recovered or docketed, the parties to the judgment or order, the date and amount thereof, and the book and page of record and of the docketing. Payment to the clerk of any court of the amount due upon any judgment or order shall in no wise be deemed to affect the right of any party to the action to appeal or to move for relief or for a new trial. The clerk shall hold moneys so paid into court subject to the further order of the court.

Note of Reporter. The above rule is derived from sections C 2 27-314 1 and 2 27-314 2.

The latter section seems to authorize the clerk to pay out, without an order of court, the moneys received in satisfaction of the judgment whenever the time limited for taking of appeal has expired and no appeal has been taken or whenever, prior to the expiration of that period, all parties file a written consent to the payment of the money or in certain other situations. Still the statute is anything but clear, and it would seem to be as well for the clerk to act in every case on order of the court made after motion of the parties. If it is a consent order, it will entail very little more trouble than a written consent.

3:65-5. Form and scope of injunction or restraining order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon such parties to the action, such of their officers, agents, servants, employees, and attorneys, and upon such persons in active concert or participation with them, as receive actual notice of the order by personal service or otherwise.

Note of Reporter. The only change here consists of the insertion of a comma in the last clause following the word "them".

3:69-2. Execution first made out of property of party primarily liable. If a writ of execution is issued against several parties, some liable after

the others, the court before or after the levy may, on application of any of them and on notice to the others and the execution creditor, direct the sheriff or other officer that, after levying upon the property liable to execution, he make the money, if possible, out of the property of the parties in a designated order

Note of Reporter The second sentence of Rule 3 69-2 has more to do with satisfaction of judgments than with execution, and hence has been transferred to proposed new Rule 3 57-4

3:70-2. Order and writ of possession. Where a party by virtue of any judgment or order, or any writ, sale or proceeding thereunder, claims the possession of property, but the judgment or order does not provide for the delivery of possession, the court on motion may make an order for the delivery of possession, provided notice of the motion is given to the person in possession and proof is made that he has failed to deliver possession 10 days after a demand in writing has been made upon him therefor. When any order or judgment is for the delivery of the possession of real or personal property, the party in whose favor it is entered is upon application to the clerk entitled as of course to a writ of possession directed to the sheriff. The writ may include an execution for costs. Writs of assistance are superseded.

3:72-1.1. Order for bond; bail. The aforesaid order shall prescribe the amount of the bond to be given by plaintiff to defendant with sufficient sureties to indemnify defendant for all damages resulting from the attachment and taxed costs of the action, if the action is dismissed, or if judgment therein is given for defendant.

If an attachment shall issue as herein provided an order for bail shall not be made.

Source L 1948, c 358, p 1434, §5

Note of Reporter The words, "if the court in its discretion so directs", concerning the bond to be given by plaintiff should be stricken, thereby restoring the former mandatory requirements for such bond under the Act of 1903 (R S 2 42-75). "Local statutes and practice, almost without exception, require that before an attachment or garnishment shall issue, the plaintiff shall give a bond * * *". 5 Amer Juris, sec 896, page 135. "The statutes authorizing attachment usually require as a condition to the issue of the writ, that a bond shall be given by plaintiff to indemnify defendant * * *". 6 Corp Juris, sec 283, page 161.

3:72-1.2. Attack; procedure on vacation. Any attack, upon the writ of attachment or the levy, by the defendant shall be by motion made before answer filed, but the motion shall not constitute a general appearance. The practice and procedure in relation to the vacation of the writ when improperly issued, shall be the same as for setting aside an order for bail except as otherwise herein provided.

Source, L 1948, c 358, p 1434, §6

Note of Reporter Substitute the word "affidavit" for proof since under R S 2 42-88 an affidavit is the only proof upon which a writ may issue. The word "proof" in this section is taken from the Act of 1903 (R S 2 42-76), but under that act the writ could issue "upon proof by affidavit or otherwise" (R S 2 42-72).

Strike out words "if any be required, approved by the court or any judge" since a bond will be mandatory under R S 2 42-90 as revised and the approval of such bond may be had under Rule 3 102-5.

The third sentence viz, "The practice and procedure in relation to the writ, its effect, levy etc shall be the same in all cases of attachment" should be stricken. This provision is derived from the Act of 1903 (R S 2 42-76) which was intended to make applicable to that act the practice and procedure established under the Act of 1901 (R S 2 42-1 et seq.) Hotel Registry Realty Corp v Stafford, 70 N J L 528, 536 R S 2 42-76 contained the words "as in cases of attachment" while the instant section contains the words "in all cases of attachment". With the total repeal of the Act of 1901 by R S 2 42-130, the reference to the 1901 act is of no consequence.

The provision that the writ issue in duplicate is amended so as to require duplicate writs only when issued out of the superior court.

3:72-1.3. Attachment book; entries in. The clerk shall enter, in a book to be kept for that purpose, the names of the plaintiff and defendant, the time of issuing the writ and the amount for which issued, which book shall be a public record, accessible to the public.

Source L 1948, c 358, p 1437, §16

Note of Reporter R S 2 42-90 provides "that the writ shall issue for such sum as the court shall fix".

The words "for which issued" are therefore substituted for the words "therein demanded".

3:72-1.4. Issue of writ as commencement of action. The issuance of a writ of attachment as provided by these rules shall be the commencement of the action, and no summons shall be necessary to bring defendant into court.

3:72-2.1. Entry of default against defendant. In default of a pleading or failure to move as required by Rule 3 72-2 default may be entered against defendant, and the practice and procedure thereon for the entry of judgment by default and generally in the action shall be the same as in other civil actions, except as otherwise provided in these rules.

Source L 1948, c 358, p 1440, §27

Note of Reporter The words "failure to move" are added to prevent a default in the event of a motion to quash. A motion to quash is not a "pleading". United States v J L Hopkins & Co, D C N Y 228 F 173, 175. Sec 26 (R S 2 42-111) to which this section refers, refers to both the answer and motion.

3:72-3.1. Claims by third persons; procedure. Any person claiming the property attached may proceed in the action on order to show cause as prescribed in the rules of court. The claimant shall pay the costs of the proceeding brought by him if a finding shall be made that none of the property claimed belongs to him. If it is found that some of such property belongs to the claimant, the plaintiff shall pay the costs.

Source L 1948, c 358, p 1441, §30

Note of Reporter This section has its origin in the Act of 1901 (R S 2 42-27 and R S 2 42-32). The last clause should be stricken as indicated since the obligation to pay costs for the error in attaching property not belonging to defendant should not be charged to defendant out of the proceeds of the sale of his property. The provision of the Act of 1901 (R S 2 42-32) in this regard should be restored.

3:72-3.2. Execution to sheriff on judgment; sale of attached property. Plaintiff, when judg-

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ment is rendered for him in the attachment against defendant therein, may issue execution on the judgment directed to the sheriff of the proper county, commanding him to proceed thereon as in other executions, and to sell the attached property as of the date when the attachment became a lien thereon, which shall be specified in the execution, or at any time thereafter

Source. L 1948, c 358, p 1443, §39

Note of Reporter. This section is derived from the Act of 1901 as amended by L 1915 c 325. Under R S 2 42-104, the writ becomes a lien on real estate from the time of its issue, and under R S 2 42-103 the writ becomes a lien upon personalty from the time of its execution. This section as written provides that the sheriff shall sell under the execution as of the date of the issuance of the writ without differentiating between realty and personalty. The words "when the attachment became a lien thereon" are substituted to cover executions against both realty and personalty.

The last paragraph is stricken since it refers to the sales provided for under R S 2 42-56 (now R S 2 42-120) and R S 2 42-57 (now R S 2 42-121). In view of the disposition of R S 2 42-120 and R S 2 42-121, there is no occasion for retaining this paragraph.

The words "or a coroner" are stricken. If the sheriff cannot serve, a coroner may be designated under R S 40 41-16.

3:72-3.3. Errors; amendments; affidavits; pleadings; process. Errors in form or substance which do no substantial damage shall not vitiate the attachment proceedings, and the court may, at any stage of the proceedings, permit amendments of the pleadings, affidavits and process, or the submission of additional affidavits.

Source L 1948, c 358, p 1445, §44

3:72-4.1. Powers of sheriff in execution of writ. The sheriff, if refused admittance after demand therefor, is empowered to break open any house, chamber, room, shop, door, chest, trunk or other place or receptacle where or in which he is informed or has reason to believe any money, goods, chattels, books of account, bonds, bills, notes, papers or writing of defendant may be deposited, secreted, had or found.

Source L 1948, c 358, p 1439, §25

Note of Reporter. This section is derived from the Act of 1901 (R S 2 24-26). Under the former act the sheriff was required to take tangible property into his possession. *Tomlinson v Stiles*, 29 N J L 426, 429, Harris, Pleading and Practice in New Jersey, sec 143 (1939), 6 Corpus Juris, sec 428 and 591. Also see *Nelson v Van Gazelle Valve Manufacturing Co*, 45 N J Eq 594. However, R S 2 42-102 of the present act allows the officer the alternative of merely serving a certified copy of the writ upon the person in possession of the property. In view of the sheriff's option as to whether he will take the property into his custody or not, the words "and required" are stricken.

3:72-5.1. General powers of sheriff as to attached property. The sheriff, when so ordered by the court, may complete any attached goods which are in process of manufacture and put the same in a marketable condition, and may, under like order, put and keep the attached real estate in tenantable condition, and may, without such order, cause attached real estate or personal property to be insured against fire, making such

expenditures out of any moneys in his hands as may be necessary for the purposes aforesaid.

Source. L 1948, c 358, p 1442, §33

3:72-5.2. Sale of personal property by sheriff; notice. Personal property including rights, credits, choses in action, and effects may be sold at private or public sale. Notice of a public sale shall be given as on a sale of chattels under execution.

Source L 1948, c 358, p 1442, §36

Note of Reporter. This section is derived from the Act of 1901 (R S 2 42-57). Since R S 2 42-124 confers sufficient authority upon the sheriff to sell the attached property under writ of execution, there is no necessity for the retention of this section except with respect to sales by the sheriff before final judgment under court order as in case of perishable goods or other circumstance requiring sale before judgment.

The words "either" and "or after" have, therefore, been stricken.

In *Jackson v Halsted*, 82 N J L 306, the court, in referring to R S 2 42-57, said that a sale thereunder was, in substance, an execution.

3:72-5.3. Purchasers at sale of personal property. Plaintiff may become the purchaser at any sale of personal property herein authorized.

Source L 1948, c 358, p 1443, §37

Note of Reporter. This section is derived from the Act of 1901 (R S 2 42-58) and was intended to apply only to sales within the purview of R S 2 42-56 and R S 2 42-57. Since R S 2 42-57, as now embodied in R S 2 42-121, is limited to sales of personalty before final judgment, this section is now likewise limited to sales of such personalty only, the word "real" being, therefore, stricken.

3:73. Costs on default judgment. Where the goods and chattels have been delivered to the plaintiff by the sheriff or other officer, and the defendant does not appear and defend but suffers judgment to be entered by default, there shall be no costs allowed to the plaintiff, except where the defendant has refused to deliver the goods and chattels pursuant to a written demand therefor made before the commencement of the action.

Note of Reporter. Under Rule 3 54-6 a successful party is entitled to costs except when express provision therefor is made either in a statute or in the rules. The replevin statute R S 2 73-34 as amended P L 1948 c 374 p 1539 §16 prohibits the granting of costs in an action where the defendant defaults and did not receive a written demand for the chattels. The provision as to costs is to be eliminated from the proposed revision as being a matter of procedure though the prohibition as to damages is to be retained. No costs should be permitted in the case mentioned and the rule should be enacted to conform to previous practice.

3:73. Judgment when goods have been redelivered. If the goods and chattels have been redelivered to the defendant upon his making claim thereto and giving a redelivery bond as provided by the statute and judgment is to be rendered for the plaintiff a finding shall be made of the value of the goods and chattels as well as the damages of the plaintiff and the plaintiff shall have judgment thereon, and, in addition the plaintiff shall have his remedy on the delivery bond.

Note of Reporter. Rule 3 73-5 does not cover cases where the goods have been delivered to the defendant on his giving a redelivery bond. This proposed rule

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is based in part on R S 2 73-18 which establishes the procedure where the defendant obtains possession of the property. This section is to be repealed and there is need for this rule to take the place of the former statute

3:73-4. Defendant claiming for self not to claim for another. If the goods and chattels shall not be delivered to the plaintiff because of a claim of property by the defendant, the defendant shall not be entitled to plead any defense to justify the taking of the same as the property of any person other than himself.

Note of Reporter This proposed rule is based on former R S 2 73-23. It is an estoppel to plead. Rule 3 73-4 permits a defendant to plead the title of a third person, but where the defendant re-replevies and claims title in himself, he should not be permitted to change positions (cf. *Stretch v. Watson*, 6 N J Super 456 (Ch Div 1949)).

3:74-1. Summons; complaint. In an action for the possession of land, the practice and procedure, including the summons, shall be as in other civil actions. With the claim for possession, the plaintiff in his complaint may join a claim to the title of the land, to mesne profits or any other claim pursuant to these rules. The premises claimed shall be described in the complaint with such certainty that the defendant will be distinctly apprised of their situation and that possession thereof may be delivered according to that description, if the plaintiff claims only an undivided interest therein, the complaint shall state the interest claimed. Actions of ejectment are superseded.

Note of Reporter The rule is amended so as to have it appear clearly that in an action for possession of land one may try title to land, as heretofore in an action for ejectment, quite beyond that, however, an action for possession of land is not to be looked upon as a special form of action, like ejectment, in which the parties were limited to the issues of possession, ouster, title and mesne profits.

3:74-2. Defense as to part of premises; disclaimer. One or all of the defendants may defend for a part only of the premises, and when for a part only, it shall be described in the answer with like certainty as is required in the complaint. If a defendant shall defend for a part only, the plaintiff shall have judgment against him on the pleadings, for the recovery of possession of the part not defended. A defendant not in actual possession of the premises at the commencement of the action may by his answer and without leave of court disclaim all right or title to the premises or to a specified part of them, and may by order of the court be allowed costs, and upon the service of his answer, plaintiff shall have judgment against him on the pleadings for the possession of the premises or the part specified.

Source R S 2 51-16

Note of Reporter As to judgments on the pleadings, see Rule 3 12-3. Nothing is provided therein as to a judgment on a part of a claim, and hence the matter is expressly covered by Rule 3 74-2.

3:74-4. Definite statement of claim or title. Any person may through interrogatories served pursuant to rule 3 33 require another party to

serve a definite statement of his claim or title to the premises, including an abstract of the documentary evidence of title that he intends to give in evidence at the trial, and if any such documents may by law be recorded, the place, book and page where they are recorded, or if not recorded, then copies of such of the documents as are in his possession with the names of the subscribing witnesses, if any. When a definite statement is demanded and has not been amended, the evidence of title shall be confined at the trial to the matters contained in the statement.

Source R S 2 51-25 to 2 51-28, as am L 1948, c 373, §§22 to 25

3:74-5. Judgment by default or for failure to appear. Where in an action for possession of land judgment is sought either because of the failure of the defendant to plead, appear at the trial or defend as to the whole or a part of the premises or because of the filing of a disclaimer or the withdrawal of an answer, the court need not require proof of title by the plaintiff.

Source Rule 3 74-4

Renumber Rules 3 74-5 to 3 74-8 inclusive, so as to make them 3 74-6 to 3 74-9, respectively.

3:74A-1. Summons; complaint. In any action authorized by statute to quiet and determine title and claims to property, real or personal, the practice and procedure, including the summons, shall be as in other civil actions. The property shall be described in the complaint with such certainty that the defendant will be distinctly apprised of its location or character, and a judgment affecting same may be entered according to that description.

Source This rule is derived in part from sections 10, 22, 33, 40 and 48 of Title 2, chapter 76 of Revised Statutes, as amended.

Note of Reporter The reference to this proposed rule as 3 74A is temporary. It is suggested that upon a revision of the rules same should be placed following or close to Rule 3 74 relating to actions for possession of land.

3:74A-2. Answer. If a defendant to such an action answers claiming any title, interest, estate, lien or other right in the property, or any part thereof, he shall therein specify and set forth the same with certainty according to the fact, and also the manner in, and the sources through, which said claim is held and derived.

Source This rule is derived from sections 12, 24 by reference, 35, 42 and 50 of Title 2, chapter 76 of Revised Statutes, as amended.

3:74A-3. Tender; deposit in court. The attorney general need not, in behalf of the state, make or offer to make any tender or payment into court either on or before filing a complaint seeking to settle the title to riparian lands or lands under water.

Source. This rule is derived from section 53 of Title 2, chapter 76 of Revised Statutes, as amended.

3:74A-4. Default in, or disclaimer of defense;

costs. No judgment for costs shall be had against any defendant to such an action who either suffers a default to be entered against him or files a disclaimer of any title, interest, estate, lien or other right in the property or any part thereof. A defendant who, by his answer, denies that he claims or ever has claimed or pretended to have any title, interest, estate, lien or other right in the property or any part thereof, may, by order of the court, be allowed costs.

Source This rule is derived from sections 11, 24 by reference, 34, 41 and 49 of Title 2, chapter 76 of Revised Statutes, as amended.

Note of Reporter I invite attention to a change in the provision for the allowance of costs by making same discretionary with, and not mandatory upon, the court.

3:74A-5. Judgment by default or for failure to appear. Where in any such action judgment is sought either for failure on the part of the defendant to plead or appear at the trial or upon the filing of a disclaimer or the withdrawal of an answer, the court may permit the plaintiff to prove the allegations of his complaint by affidavit.

Source This rule is derived from sections 11, 24 by reference, 34, 41 and 49 of Title 2, chapter 76 of Revised Statutes, as amended.

Note of Reporter This rule is designed to permit of the entry of a judgment where a default is suffered or a disclaimer filed. This in essence will conform to the practice which prevailed in the former court of chancery, under Chancery Rule 100.

3:74A-6. Place of jury trial. In any such action to be tried before a jury, the trial may be held in and before a jury of a county other than that in which the property is situate, whenever the court so orders.

Source This rule is derived from sections 13 and 24 by reference, of Title 2, chapter 76 of Revised Statutes, as amended.

(Renumber present 3:75-3, 3:75-4 and 3:75-5 to read 3:75-24, 3:75-25 and 3:75-26, respectively.)

3:75. Partition action not to be delayed by reason of dispute as to defendants' title. When in a partition action the plaintiff's right to an actual partition or to a sale thereof, if actual partition is found to be impractical, is not contested, one of the defendants raises an issue of title as to a co-defendant, the plaintiff and each defendant whose title is not questioned may have judgment that their interest be set off by actual partition, if practicable, or that the real estate be sold and the plaintiff and each defendant whose title is not questioned be paid his share of the net proceeds of the sale, without awaiting the determination of the question of title as between the contesting defendants. The balance of the proceeds shall be paid into court to await the determination of the question of title.

Note of Reporter This rule is based upon R S 2 71-36 to be repealed. The court would have inherent jurisdiction to make an order pending the final disposition of the question of title. Cf. *Margate Co v Penrose*, 82 N J E 370 (E & A 1913). Rule 3 42-2 authorizing a separate trial. This rule will justify a quick disposition of the matter so far as it concerns the plaintiff.

3:75-2. Partition; dower; curtesy. If in an action for partition, dower or curtesy, the court shall be of the opinion that a division of the real estate can be made without great prejudice to the owners thereof, it may appoint a person as commissioner to ascertain and report in writing the metes and bounds of each share, but if a division cannot be made without great prejudice to the owners, the court shall appoint a commissioner to sell the real estate at public or private sale, as the court shall direct. If the court shall find that any portion of the real estate can be divided and partition made thereof, and that other portions cannot be so divided without great prejudice to the owners thereof, it may direct the commissioner to proceed to make partition and division of such part of which division can be made and to set apart such portions as cannot be divided to be sold. The court may, in its discretion, if the action be one for dower or curtesy, direct an assignment from the rents and profits.

Note of Reporter This amends the existing Rule 3:75-2 to embody the substance of R S 2 71-65 and 2 71-83.

3:75-2.1. If in an action for the release of an incompetent's right of dower or curtesy it shall appear necessary that dower or curtesy be admeasured, or real estate be appraised, in order to determine the amount and value of a dower or curtesy estate, the court shall have the power in such proceeding to admeasure or appraise such real estate. This rule takes the place of R S 3 46. It is thought that it can well be the subject of a rule rather than statute.

3:75-3. Sale free of unpaid debts of ancestor. The court ordering a sale of real estate in an action for partition may, if it appears that the personal estate of the ancestor from whom such real estate descended is insufficient to pay his just debts, direct the real estate to be sold free and clear of the lien or claims of the debts, and make such order touching the disposition of the proceeds as may be necessary for the ascertainment and payment of the debts, or the deficiency thereof, from the proceeds prior to distribution.

Source R S 2 71-64.

3:75-3. Any proceedings for the sale of real estate by fiduciary or for partition, or for the sale or mortgage of dower or curtesy when the holder thereof is incompetent, a complaint shall be filed with the court and an order to show cause shall issue in accordance with the provisions of Rule 3 79. If the person or persons affected by the complaint shall not cause his or her appearance to be entered on or before the return day of said order, the court shall appoint a guardian ad litem to represent him or her therein. Notice of the application for the appointment of a guardian ad litem may be given at the time of the service of the order to show cause.

Note of Reporter. Rule 3 75-3 presently provides for the service of notice. It has been amended so that the

procedure shall be by order to show cause in accordance with Rule 379. This conforms to the present R S 340-2 and is believed to be better practice

3:75-4. Parties. In an action for partition the complaint shall particularly describe the premises sought to be divided, and shall set forth the rights and titles of all persons interested therein, so far as the same are known to the plaintiff, including the interest of any tenant for years, for life, dower or curtesy, and the persons entitled to the reversion, remainder or expectancy, and every person who, by any contingency contained in any devise, grant or otherwise, may be or become entitled to any beneficial interest in the premises. Every person having any such interest may be made a party to the action.

3:75-5. Parties; lienholders. It shall not be necessary to make any creditor having a lien by judgment mortgage or otherwise, on real estate sought to be partitioned, or any part thereof, a party to the action, nor shall the partition of the real estate affect or impair the lien of any such creditor. Where such lien is on the undivided interest or estate of a party, the lien, if partition of the real estate is made, shall thereafter be a charge only on the share assigned to such party, but such share shall be charged first with its just proportion of the costs of the proceedings in partition, in preference to any such lien. The plaintiff may, at his election, make parties to the action every creditor having a lien on the undivided interest or estate of any of the parties, and in such case the complaint shall set forth the nature of the lien or encumbrance. Where lienholders have not been made parties, the court may, before ordering sale of the premises, on motion of any party, admit as a party a creditor having a lien on the undivided interest, share or estate of any of the parties, and may thereupon ascertain and determine whether the shares or interests of the parties to the action, or any of them, are subject to a lien or encumbrance, and if so, to what liens or encumbrances, and by whom they are held.

Source. R S 271-47, 271-48, 271-49, 271-50 and 271-62.

3:75-5(b). The court shall also determine the clear yearly income from the premises as provided in Rule 375-4, and then calculate the amount of the investment, basing it upon this income capitalized at 3%.

Note of Reporter. Where an income from an investment is to be allowed in lieu of dower or curtesy, the amount of the investment should not be calculated under Rule 375-5(b) by capitalizing the yearly income at 3%. The result would have to be multiplied by $\frac{1}{2}$ or $\frac{1}{3}$ in the case of dower, depending on whether the law as it stood on and after January 1, 1929, or the law as it stood prior thereto, is applicable. The result would be different in the case of curtesy, likewise depending upon whether the law existing on and after January 1, 1929 or that existing prior thereto governs. And the situation would be still different where an allowance is made "in lieu of an estate for life or years devised in lieu of dower or curtesy." Hence, in accordance with Rule 375-5(a), Rule 375-5(b) is amended so as to show "the basis" of the calculation.

3:75-6. Proceeds of sale of share subject to liens. If the court shall determine that there are existing liens or encumbrances on the estate, share or interest of any party named in the action, the court shall, if sale is ordered, direct that the portion of the moneys arising from the sale of the estate, share or interest of such party, be paid to the clerk of the court. The party in interest, either owner or encumbrancer, may upon notice to each lienholder, encumbrancer or owner, as the case may be, apply to the court for an order directing payment to him of so much thereof as he shall claim, and the court shall make such order thereon as the circumstances of the case may require, and when the amounts of existing liens or encumbrances have been ascertained the court shall proceed to order a distribution of the moneys in court among the several creditors having liens or encumbrances, according to the priority thereof, respectively, and other persons, if any, entitled thereto, after first deducting therefrom the portion of the costs, charges and expenses to which such share shall be liable. The clerk upon paying such lien or encumbrance shall procure satisfactions thereof to be duly acknowledged, and cause the lien or encumbrance to be duly satisfied or canceled of record, and shall defray the expenses thereof out of the portion of the moneys in court belonging to the party by whom the lien or encumbrance was payable, if there be enough for the purpose, but if not, then out of the money due the lienholder or encumbrancer. Such application for an order directing payment shall not affect any other party in the action for partition nor delay the paying over or investing of moneys to or for the benefit of any party except the one upon whose share in the premises the lien or encumbrance exists.

Source. R S 271-51, 271-52, 271-53, 271-54, 271-55 and 271-63.

3:75-7. Division of real estate; report. In making partition the commissioner shall divide the real estate, and allot the several portions and shares thereof to the respective parties, quality and quantity relatively considered, according to the respective rights and interests of the parties so adjudged by the court, and he may, if necessary, employ a surveyor to aid him therein. The commissioner shall make a report to the court, describing the land divided and the shares allotted to each party, annexing a map, if any, and stating the items of his charges.

Source. R S 271-6.

3:75-8. Report and map of commissioner recorded. Upon confirmation of the report of the commissioner the court may order him to cause a copy of the report of partition, with map annexed, if any there be, to be recorded in each county wherein the real estate partitioned is situate, by the register of deeds or county clerk, as the case may be. Such recording shall be done

at the cost and expense of the persons interested in the real estate partitioned and the register or clerk shall record the report as a deed of real estate

Source R S 2 71-44

3:75-9. Report of sale; confirmation; deed.

The commissioner directed to sell real estate shall, after completing such sale, report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of such purchaser, and the price bid by him. Such a sale shall not be valid unless confirmed by the court upon proof that the price obtained was fair and the sale not injurious to the interests of the parties concerned. If such sale be approved and confirmed by the court, an order may be entered directing the commissioner to record the report and execute a conveyance, which such commissioner shall be authorized to do upon the entry of such order.

Source R S 2 71-83, 2 71-84 and 2 71-85

3:75-10. Conveyance recorded. A conveyance executed pursuant to a sale in an action for partition, shall be recorded in the county where the premises are situate, and shall be a bar against all persons interested in the real estate in any way, who shall have been parties in the proceedings, and against all other parties claiming by, from or under such parties or any of them.

Source R S 2 71-45

3:75-11. Receipts and discharges; record by surrogate; evidence. When a commissioner shall sell real estate and distribute the net proceeds to the persons thereto entitled by law, the commissioner may produce the receipts and discharges therefor to the surrogate of the county wherein the real estate, or the more valuable part thereof, is situate.

The surrogate shall, if the receipts and discharges are proved and acknowledged in the manner in which conveyances of real estate are required to be proved or acknowledged, immediately record the receipts and discharges and such proof or acknowledgment in the book of receipts and discharges in his office.

The surrogate shall indorse on each receipt and discharge the book and page where and the time when it was recorded, and he shall sign his name thereto.

Such record, or a certified copy thereof under the hand and seal of the surrogate shall, if it is made to appear that the original receipt and discharge has been lost or that it is not in the power of the party offering the evidence to produce the same, be received in evidence in any court of record in this state.

Source R S 2 71-87

3:75-12. Proceeds of sale; disposition. The court shall order the commissioner to pay the money arising from the sale to the parties interested in the real estate sold, their guardians or legal representatives, in proportion to their

respective rights therein, deducting from their respective shares the costs and charges which may be allowed and ordered to be retained. If any party is absent from the state without such legal representative in this state, the share of the moneys due him shall be invested in permanent securities at interest, for the benefit of such parties, until claimed by them or their legal representatives.

Source R S 2 71-86

3:75-13. Disposition of proceeds where person unknown or absent; refunding bond. When real estate is sold in an action for partition, and the residence of a person interested for life or otherwise in the proceeds thereof is not known, or it is not known whether or not a person, who would, if living, be interested for life or otherwise in the proceeds thereof, is living, or when a person interested for life or otherwise in such proceeds, whether or not a resident of this state, absents himself from or conceals himself within this state for 7 years successively, the court having power to distribute such proceeds may, by its order or judgment.

a Order the share or interest of any such person to be invested in bonds of this state, or of any city or county thereof authorized by law to issue bonds, in bonds secured by mortgage on real estate, or in such public or other securities as the court may approve and direct and control the custody of the securities which may be taken, from time to time, for any investment ordered, and

b Order, at such time as the court may determine, either before or after an investment is ordered, or at any time after the proceeds or any part thereof has been deposited in court, a distribution of the share or interest, which any such person would, if living, be entitled to, to or among such person or persons interested in such share of the proceeds as are known to be living, in proportion to their respective interests therein, or to and among the person or persons thereto entitled by law if any such person is dead or is presumed to be dead and fix the time when it shall be supposed or deemed any such person died, and

c Order refunding bonds to be given, by or on behalf of any of the persons to whom any part of any such share shall be distributed, to the clerk of the court and his successors in office, in such sum and with such condition, with or without security, as the court may direct.

The custody of such refunding bonds shall be in the control of the court and the court may, on application of a person who makes it appear to the satisfaction of the court that he is entitled to the money secured by 1 or more of the refunding bonds, or any part thereof, order that the money secured thereby be collected for the benefit of such person, by and in the name of the clerk of the court, who is hereby authorized to bring action thereon. If the clerk dies

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during pendency of the action, the action may be continued in the name of his successor. The court may by order or judgment dispose of the money so collected as it may deem just and right and may at any time order and enter judgment directing the payment out of such share or interest such costs and expenses as it may deem necessary and expedient.

Source R S 2 71-73, 2 71-74

3:75-14. Proceeds of share limited over; payment or investment; how invested; income. The net proceeds of a share limited over or not held in fee simple shall, under the order and direction of the court be paid to the tenant of said life or other estate, during his or her life or at his, or her death or be invested and kept invested, in the name of the superior court of the state of New Jersey, for the use of the person owning such share, upon bond secured by mortgage to the said superior court, either upon the property so sold, or any part thereof, or the fee simple of other unencumbered real estate in this state, worth at least double the principal sum so secured thereon, two-thirds of which value shall be in the land itself, independent of any building thereon. The bond and mortgage shall, after being duly recorded, be filed in the office of the clerk of the superior court, there to remain as of record until duly satisfied and discharged. Such clerk shall be authorized to certify copies of any such bond and mortgage under the seal of the superior court, and such copies, so certified, shall be evidence as other records and files of such court are, when so certified.

The interest accruing on such bond shall be paid annually or semiannually, according to the condition thereof, to the person who would have been tenant of the particular estate of such share if there had been no sale thereof, his heirs, executors, administrators or assigns, and shall be so secured by the condition of the bond and mortgage. The principal and interest, when not paid in accordance with the conditions, shall be collected under the order and direction of the court. If paid during the lifetime of said tenant, the court shall fix the amount to be paid, by establishing the then present value of said interest, or in such other way as the court shall direct.

When the principal sum, or a part thereof, is collected, it shall be paid into the superior court, by payment to the clerk thereof, there to remain until paid out under the order and direction of the court or reinvested, and the clerk and his sureties shall be responsible therefor. No other payment shall discharge the bond and mortgage or authorize a county clerk or register to discharge the registry or record thereof.

At such time as the share of real estate so sold would have become vested in fee simple absolute and the particular estate or estates therein would be determined, as aforesaid, if no such sale

thereof had been made, the principal sum or mortgage representing such share in the real estate shall, under order and direction of the court, be paid or assigned to the persons, their heirs or assigns, who would have been entitled to the fee simple absolute in such share of real estate, unless said share shall have been theretofore already disposed of and paid by the order of the court.

Source R S 2 71-32, 2 71-33, 2 71-34

3:75-15. Bond of guardian. The guardian of any minor or any other person under guardianship, entitled to a proportion of the moneys arising from a sale in an action for partition, shall file with the clerk of the court, in such amount as the court shall direct, a bond to the superior court with such surety as shall be approved by the court, conditioned for the faithful performance of the trust committed to such guardian.

Source R S 2 71-61

3:75-16. Costs on partition; assessment and collection. When an order confirming the partition made by the commissioner shall be made, the court shall also adjudge that each of the parties concerned, other than a plaintiff, pay to such plaintiff a proportion of the costs and charges of the proceedings, to be ascertained by the court, according to the respective rights of the parties, and upon such order execution may issue, and may be levied on the property of the parties respectively charged with such costs, for the proportion adjudged to be paid. Such costs may include any and all fees as may have been necessarily paid or incurred for or in behalf of the plaintiff in procuring searches in relation to the real estate sought to be partitioned. In the event of a sale of the real estate in the action for partition the plaintiff shall be entitled to be paid such costs out of the net proceeds of sale.

Source. R S 2 71-46

3:75-17. Expenses and compensation of commissioner on partition. The expenses of the commissioner, including the expenses of a surveyor, if employed, shall be ascertained and allowed by the court, and the amount thereof together with such compensation as shall be allowed to the commissioner by the court for his services, shall be paid by the plaintiff and allowed as part of the costs to be taxed.

3:75-18. Commissions on sales. When a commissioner appointed by the court shall sell the real estate and the court allows him commissions thereon, the commissions shall not exceed the following rates:

On all sums not exceeding \$1,000 00	2%
On the excess over \$1,000 00 and not exceeding \$3,000 00	1%
On the excess over \$3,000 00	½%

Source R S 2 71-89

3:75-19. Oath of commissioner. The com-

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missioner, before entering upon the duties of his office, shall subscribe to an oath or affirmation before a person authorized to administer oaths in this state, honestly, faithfully and impartially to execute the trust reposed in him and perform the duties required of him, to the best of his skill, knowledge and judgment. Such oath shall be filed with the clerk of the court before the commissioner enters upon his duties. Source R S 2 71-76

3:75-20. Vacancy in office of commissioner. Where a commissioner dies, resigns, refuses or neglects to serve before his duties are completed, the court shall appoint another commissioner to act in his stead. Such newly appointed commissioner shall subscribe to and file the prescribed oath and shall be vested with like powers and authority as if he had been originally appointed. Source R S 2 71-75

3:75-21. Death of commissioner after sale. If in an action for partition the commissioner shall die after making a sale, whether before or after the confirmation thereof, the court shall appoint a new commissioner to make a report of the sale and, if the sale is confirmed, execute the proper deeds to the purchasers of the real estate. A conveyance so made shall be as valid and effectual as if made and executed by the commissioner who made the sale. Source R S 2 71-77, 2 71-78

3:75-22. Death of purchaser; deed to successors in interest. When a purchaser of real estate at a sale thereof by a commissioner dies (a) after the sale has been made and the conditions thereof subscribed and agreed to but before it has been confirmed by the court, or (b) after the sale has been confirmed and the deed either has not been delivered to him prior to his death or having been delivered has been lost or mislaid and is not of record in the office of the county clerk or register of deeds and mortgages of the county wherein the real estate is situate, such commissioner shall, the sale being confirmed by the court, execute and deliver to the heirs or devisees or assigns of the purchaser or the then present equitable owner of the real estate so sold a deed therefor, subject to any conditions, restrictions or reservations contained in the order of the court, if any there be, directing the making of such deed.

No deed shall be delivered by such commissioner until the conditions of sale have been fully complied with.

Such deed when delivered as provided in said section shall have the same force and effect with respect to title as if the purchaser had received a duly executed deed in his lifetime or, having received it, it had not been lost, as the case may be.

No such deed shall be to the prejudice of any rights in, privileges to, liens or encumbrances upon or affecting such real estate or any part

thereof, if any such exist, at or before the time of the delivery thereof.

Source R S 2 71-79, 2 71-80 and 2 71-81

3:75-23. Resale on default of first purchaser. If a purchaser at any commissioner's sale of real estate, either (a) after the sale has been made, and the conditions thereof have been agreed and subscribed to, and the sale has been confirmed by the court, or (b) after the sale has been confirmed, but before the deed has been delivered to him, refuses or neglects to comply with any of the conditions of such sale, including the receiving of the deed and the payment of all of the purchase price, the court authorizing, ordering or confirming the sale may, upon application to it for a resale by the commissioner making the sale, set aside the confirmation of the sale and order the commissioner to resell the real estate. The order for a resale shall not in any way relieve the first purchaser from liability to make good and pay any deficiency or reduction of price, and interest, costs and expenses resulting from or incurred in the making of the resale. Source R S 2 71-82

3:76. Abandonment of action by plaintiff; right of subsequent encumbrances. When the plaintiff, in any action to foreclose a mortgage, makes prior or subsequent encumbrances parties to said action, and they answer, and the plaintiff neglects or refuses to proceed, the defendants, or any of them, may make application to the court, why the defendant or defendants shall not be permitted to proceed with the said action to judgment and execution, and an order may be made that said defendant or defendants shall be permitted to proceed with the action, and plaintiff shall not be allowed his costs.

Note of Reporter: This rule is based upon former Chancery Rule 201. The rule was promulgated very early and had for its purpose the denial of the plaintiff to hold up the foreclosure action to the detriment of others who had had their claims reported in the judgment. See, *Anonymous*, 8 N J E 174 (Ch 1849), *Young v Young*, 17 N J E 161 (Ch 1864), *Welch v Lawler*, 73 N J E 371 (Ch 1907). The rule is helpful and should be reenacted. This matter was discussed at the semi-annual meeting of the state bar association at the forum conducted by the real property, probate and trust section. The need for this rule was demonstrated by standing master Donnelly.

3:76A-1. Complaint. The complaint in a summary action for the appointment of 3 commissioners to fix the compensation to be paid on the condemnation of property shall be verified by the oath of the engineer or agent of the plaintiff, and shall contain

a A particular description of the lands and property required,

b The names of the owner and occupant, if any there be, the persons appearing of record to have any interest in the property, and such persons claiming an interest therein as the plaintiff desires to join as parties defendant, and

c The residence of said owner, occupant, per-

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sons having any interest in the land, and claimants, if the same can be ascertained

Source R S 20 1-2

Note of Reporter The title to the action will be the same as in other summary actions. Under Rule 3 10-1 the title of the complaint will include the names of all the parties and will be entitled in the court, today the court's name does not appear, and the title of the action may read thus

"PETITION

In the Matter of the Application of the City of A B for the Appointment of 3 Commissioners to Fix the Compensation to Be Paid for Certain Lands of X Y and others, situate in said City, to be Taken and Condemned for Public Use"

3:76A-2. Claimants as parties. Where the title to land or other property to be taken is in dispute, all claimants may be made parties either on their motion or the motion of the plaintiff, any person in interest or the court

Source R S 20 1-5

3:76A-3. Notice of appeal; service. Where an appeal is taken to the superior court from the report of the commissioners, the notice of appeal shall within 10 days after the filing thereof, or within such further time as the court may for good cause grant, be served by the appellant in the manner prescribed by Rule 3 4 for the service of a summons, or be served upon the attorney, if any, of any person entitled to notice who shall have appeared for that person before the commissioners

Source R S 20 1-19

3:76A-4. Notice of appeal; contents. The notice of appeal shall set forth that an appeal has been taken from the award of the commissioners, and shall specify the time and place when and where the appellant will apply to the superior court to frame the issue and to fix a day for striking a jury and a day for the trial of the appeal. The time named for the application shall be not less than 5 days from the date of service of the notice. The court may by order change the time or place on the application of either party and direct what notice of the change shall be given to the other party

Source R S 20 1-19

3:76A-5. Trial by struck jury; time; procedure. The court, at the hearing under the notice of appeal, and on application of any party, shall by order

a Fix a day for the trial of the appeal, not less than 20 nor more than 40 days from the date of the order,

b Frame the issue between the parties,

c Direct a jury to be struck and a view of the premises and property to be had, and

d Fix a place for striking the jury and a day therefor not less than 10 days before the day fixed for the trial of the appeal

Note of Reporter The above rule is taken from R S 20 1-20, except that there has been eliminated therefrom the last sentence of the statute under which the parties are obliged to take notice at their peril of the order. Under Rule 3 5-1 all orders must be served, and it is contrary to our present practice to provide that the filing of an order puts the parties on notice thereof at their peril

Service of the order need be made only on the per-

sons specified in R S 20 1-18. Simple methods of service are provided for by Rule 3 5-2(a)

3:76A-6. Adjournment of trial. The court for good cause may adjourn the trial, but notice of the adjourned day may be given as the court directs. In the case of an adjournment the court may in its discretion either direct the same jurors to attend or order another jury to be struck and summoned in like manner

Note of Reporter This is taken from R S 20 1-21, except that instead of the provision "All parties shall take notice of the day and place fixed for the adjourned trial", there is a provision that notice of the adjourned day may be given as directed by the court. The court can give oral notice on the day fixed or such other notice as it deems advisable

3:77-6. Sales by other persons; report. In all cases where a receiver, master, commissioner, executor, administrator, guardian, trustee or other fiduciary is authorized or ordered to sell real estate, he shall report to the court any sale made by him. The report shall be verified by affidavit made pursuant to Rule 3 43-3, shall state the name of the purchaser and the price and terms of sale, and, in case of a sale made by an executor, administrator, guardian, trustee or other fiduciary, the report shall state the names and addresses of all persons in interest and, where the sale is private, shall have annexed thereto affidavits of at least 2 persons, also made pursuant to Rule 3 43-3, giving the fair market value of the property sold. Rules 3 77-6 to 3 77-8 shall not apply to an executor or trustee selling under a power of sale conferred upon him by will or other instrument, except where the approval of the court is sought pursuant to R. S. 3 25-21, as amended. Nor shall they apply to sales by fiduciaries where confirmation by the court is unnecessary

Note of Reporter R S 2 31-85 required appraisals to be submitted only in the case of a private sale, and it seems unnecessary to require them also in the case of a public sale

3:77-8. Same; order confirming sale. Written objection to the confirmation of any sale referred to in Rule 3 77-6, and opposing affidavits shall be served upon the person making the sale, not later than 1 day before the hearing unless the court permits them to be served at some other time, on the hearing the court may summarily on affidavits dispose of the objection. If the court approves the sale and, where there is a public sale, is satisfied that the real estate has been sold at the highest and best price it would bring at the sale, it shall by its order confirm the sale as valid and effectual and direct the person by whom it was made, to deliver a good and sufficient conveyance in pursuance of the sale. In the case of a private sale, this rule shall not prevent the acceptance of a better offer received after the tentative contract of sale

Note of Reporter Where there is a private sale the court does not usually investigate to determine whether or not the real estate has been sold at the highest and best price it would bring. That is a matter which seems appropriate only in the case of a public sale

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Amend Rule 3 77 so as to include the following rules

3:77-9. Sale of decedent's land liable for debts within less than a year after death. In all cases where an executor, executors, trustee or trustees shall, pursuant to a power of sale given in the will under which they were appointed and qualified, make a bona fide sale on submission to and approval of the superior court or the county court as in the case of sales made by an administrator with the will annexed of any real estate of a decedent within 1 year after his decease, then said real estate so sold shall be no longer liable for the payment of the debts of the decedent, and the purchaser shall not be liable to see to the application of proceeds of sale.

Source C 3 25-21, L 1944, c 130, p 361, §1

3:77-10. Sale of decedent's land liable for debts where land is subject to escheat. Where land may be subject to escheat to the state, proceedings to sell such land to pay debts of the decedent may be taken as in other cases, and the court may order such sale to be made in the same manner and to the same extent provided by law for other cases, and the order of the court confirming such sale shall have the same effect as similar orders made in other cases provided (1) a copy of the order to show cause why such real estate should not be sold together with a copy of the petition filed in such proceedings, shall be sent by registered mail to the state treasurer and (2) an affidavit of such mailing, together with a certificate signed by the attorney general and the state treasurer certifying that the state will interpose no objection to the making of an order authorizing the sale of such real estate, shall be exhibited to the court at the time set forth for the hearing in such order to show cause

The affidavit of mailing of copy of such petition and of such order to show cause, and such certificate of the attorney general and the state treasurer shall be filed, without cost, in the same manner as all other papers in such proceedings are required to be filed

Source R S 3 25-66 1, L 1946, c 283, p 964, §§1, 2

Note of Reporter. Provisions concerning distribution of surplus after payment of debts are in §§3, 4 and 5 of the statute mentioned

3.78-1. Action for sale; complaint. The general guardian of the person or property of an infant or incompetent person, or, if the general guardian shall fail to act or his interest is adverse or other good cause exists, a guardian ad litem appointed for him by the court after notice to the general guardian if any, may bring an action for the sale or other disposition of real estate of his ward. The term "real estate" as used in this rule shall include any future interest, right or estate of dower or curtesy or any interest in real estate held in trust over which no power of sale is given to the trustee. Every such action in this court shall be brought pur-

suant to this rule. The complaint shall be verified by affidavit made pursuant to Rule 3 43-3 and shall state the age and residence of the ward, the situation, assessed value and fair market value of the real estate proposed to be sold or disposed of, and of each separate lot or parcel, with a description thereof and a full statement of the encumbrances thereon, and shall specify the reasons why the sale or disposition would be to the best interests of the ward. Unless the court otherwise orders, no notice of the action need be given to the ward or any other person, and in an action brought by the general guardian, no guardian ad litem need be appointed for the ward

Note of Reporter. The first change in this rule was made so as to show when a guardian ad litem is to be appointed. In the usual case a general guardian brings the action. Even if a guardian ad litem is appointed, it will appear from Rule 3 78-2 that if the court decides the realty should be sold, the general guardian makes the sale, for he is under bond

The second change in the rule is merely one of phraseology

3:78-1. Action for sale; complaint. The general guardian of the person or property of an infant or incompetent, or a guardian ad litem appointed for him by the court after notice to the general guardian, if any, or a guardian ad litem appointed by the court for a person or persons not in being after notice to the parents of said person or persons not in being, or any competent adult having a vested interest in lands in which an infant, incompetent, or person not in being has an interest, may bring an action for the sale or other disposition of real estate in which the infant, or incompetent, or person or persons not in being has an interest, including any future interest, right or estate of dower or curtesy, or any interest in real estate held in trust over which no power of sale is given to the trustee. Every such action in this court shall be brought pursuant to this rule. The complaint shall be verified by affidavit made pursuant to Rule 3 43-3 and shall state the age and residence of the infant, or incompetent, or the names and residences of the parents of the person or persons not in being, or the name and residence of the competent adult, the situation, assessed value and fair market value of the real estate proposed to be sold or disposed of, and of each separate lot or parcel, with a description thereof and a full statement of the encumbrances thereon, and the interest of the infant, or incompetent, or person or persons not in being, therein, and shall specify the reasons why the sale or disposition would be to the best interests of the infant, or incompetent, or person or persons not in being. The matter shall be brought on to be heard by the court as provided by Rule 3 79-1, etc.

3:78-2. Order to sell. If from the proofs the court shall be of the opinion that the best interests of the infant, or incompetent, or person or persons not in being would thereby be sub-

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stantially promoted, it may from time to time order the general guardian, appointed or to be appointed, to sell or otherwise dispose of the real estate or such part thereof as it deems proper. The order may fix the terms and conditions of the sale or other disposition and establish a price below which the real estate shall not be sold. Nothing in these rules shall be taken to authorize the sale or disposition of any property contrary to the provisions of any will or conveyance by which the same were devised or granted to or for the benefit of the infant, or incompetent, or person or persons not in being.

3:78-3. Bond. The court on directing the sale or other disposition of real estate, shall examine into the sufficiency of the bond previously given by the general guardian, and if in its judgment the same is insufficient, it shall require him to give such additional bond approved by the court appointing him, before the confirmation of the sale, or as may be directed by the court. If he was appointed by a court other than the superior court, then before the confirmation, there shall be presented a certificate of that court certifying that a good and sufficient bond of a stated amount has been filed with it.

Note of Reporter Typographical error

3:78-3. Bond. To remain as at present.

3:78-4. Confirmation of sale; conveyance. The report, notice and order for the confirmation of a sale or other disposition shall be in accordance with Rules 3 77-6 to 3 77-8, but if the report shall be filed within 6 months after the hearing under Rule 3 78-2, it need not have annexed to it affidavits as to the value of the property sold. The conveyance to be made pursuant to the order confirming sale, when duly executed and delivered, shall vest in the purchaser as good an estate in the property as the infant, or incompetent, or person or persons not in being could have conveyed if at the time of the conveyance he were of full age and sound mind.

3:78-5. Mortgage of lands. Actions under any statute providing for the borrowing of money on the security of, or the exchange of, any real estate of an infant, or incompetent, or other person, including a person or persons not in being, shall be commenced by filing a verified complaint of the guardian or other person authorized to proceed under the statute, and shall be in conformity with Rules 3 78-1 to 3 78-4 insofar as they are applicable. In case the action is to mortgage land, the court shall also ascertain the manner in which it is proposed to meet the interest to accrue upon the mortgage. If it should appear that the best interest of the infant, or incompetent, or other person, including a person or persons not in being, would be promoted by selling his real estate rather than

mortgaging it, the court in its discretion may direct the guardian or other person designated to take such proceedings to sell the whole or any part of the same.

3:78-6. Costs and expenses of proceedings. The costs and expenses of said proceedings shall be taxed and paid out of the proceeds of sale or the proceeds of the mortgage, as the case may be. The officer making the sale shall be allowed and paid from such proceeds such percentage on the purchase money as the court shall determine, according to the character of the services performed.

3:78A. Liens.

3:78A-1. Service and posting of notice on sale of goods and chattels at public auction. All sales of personal property and chattels to enforce a lien for labor performed or material furnished in connection with such personal property and chattels shall be by public auction. Notice of such sale shall be first published for 2 weeks consecutively, at least once in each week, next preceding the date of sale, in a public newspaper published in the municipality where said personal property and chattels are located, if there be one published, if not, then in a public newspaper published in the county and circulating in said municipality. The notice shall state the time and place of the sale and shall describe the property to be sold. A copy thereof shall be served personally, or by registered mail, at least 5 days before the date of sale, upon the owner, if known, of the personal property and chattels and upon the person, if known, for whose account services were performed or material was furnished for which the lien was created.

Source C 2 60-34, L 1946, c 281, p 962, §1

3:78A-2. Special writ of execution; petition for distribution. A special writ of execution, issuing in connection with a judgment upon a mechanic's lien claim, shall direct the sheriff or other officer who is to conduct the public sale to pay the proceeds of such sale to the clerk of the court.

A petition for distribution of the proceeds may be filed by any person having an interest in such proceeds after the sale and may be heard by the court on motion and notice to all mechanics' lien claimants who have filed liens and to such other persons having an interest in the proceeds.

Note of Reporter Under the mechanics' lien law, all lien claimants are concurrent and share pro rata in the proceeds of a sale under a special writ of execution. 2A 60-154. The statute requires the sheriff to pay the proceeds into court. However, in some cases the sheriff may fail to do so and pay the proceeds to the plaintiff as in other cases. The proposed rule fortifies the statute (2A 60-155) by requiring the special writ to include a provision directing the payment into court. All lien claimants will then be protected.

The statute establishes no procedure for obtaining the distribution of the proceeds. The proposed rule requires notice to all lien claimants who are to

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participate (2A 60-155) and others, such as mortgagees, who may have an interest in the surplus 2A 60-156. The practice established by this proposed rule is similar to surplus moneys hearing Rule 3 76-4.

3:78A-3. Discharge of lien claim for failure to issue summons or to diligently prosecute. For failure of a plaintiff in a mechanic's lien action to cause a summons to issue within 5 days after filing the complaint or to prosecute such action diligently within 1 year from the commencement of such action, or such further time as a judge of the court in which such action is pending may order, the court, on motion of any proper party in interest, shall order the clerk of the proper county to discharge the lien claim and the mechanic's notice of intention upon which the lien claim is based.

Note of Reporter The proposed rule is substantially part of the former R S 2 60-137. Mechanics' lien actions should be diligently prosecuted as the liens tie up the property affected. Although Rule 3 41-2 permits a dismissal of an action for failure to issue a summons within 5 days or to prosecute such action for 6 months the rule is discretionary. It has always been the policy of the mechanics' lien law to discharge the lien whenever there has been a failure of diligent prosecution. *Hendrickson v Frieland*, 106 N J L 427, 150 A 326 (E & A 1929).

3:79-3. Service of order. No summons shall issue. Process shall be a copy of the order to show cause, certified by the plaintiff's attorney to be a true copy. The order, together with (unless the court otherwise orders) a copy of the complaint and affidavits similarly certified, shall be served within the state at least 10 days before the return day, and in the manner prescribed by Rule 3 4 for the service of a summons, unless the court orders shorter or longer service or some other manner of service. Service may be made outside the state, or by mail, publication or otherwise, all as the court may by order direct, provided the nature of the action is such that the court may thereby acquire jurisdiction.

Note of Reporter Under the proposed change, for example in a summary action or order to show cause for the settlement of an account, the court may direct in the order to show cause that neither the complaint nor the attached account need be served on parties in interest or that merely the complaint need be served on them.

3:79-4. Answers and objections. The defendants shall, not later than 1 day before the return day, or within such further time as the court may allow, serve (a) an answer, (b) an answering affidavit or (c) a motion returnable on the return day, in default thereof, the action may proceed ex parte. No counterclaim or cross-claim shall be asserted without leave of court. At the hearing or on motion at any stage of the action, the court may for good cause order the action to proceed as in a plenary action wherein a summons has issued.

Note of Reporter A minor matter of phraseology.

3:79A-1. Failure to perform or execute award on arbitration; process. Where a party to a submission to arbitration in accord with the statute neglects or refuses to perform or execute the

arbitration or umpirage, the court on motion shall issue process in contempt, which shall not be delayed in its execution, unless it shall appear to the court, on oath, that the arbitrators or umpire misbehaved and that the award, arbitration, or umpirage has been procured by corruption or other undue means.

3:79A-2. Order of court for arbitration; summary trial; jury trial. On an application to the court for an order directing arbitration in the manner provided for in an agreement, the judge shall hear the parties and if satisfied that the making of the agreement or a failure to comply therewith is not in issue, shall make an order directing the parties to proceed to the arbitration in accordance with the terms of the agreement, but if found to be in issue, an order shall be made directing a summary trial thereof. Where such an issue is raised the party alleged to be in default may, on or before the return day of the notice of application required by section 2A 40-12 of the Revised Statutes, demand a jury trial of the issue. If demanded, the judge shall make an order referring the issue to a jury called and impaneled in the manner provided for the trial of actions at law, but, if not so demanded, the issue shall be heard and determined by the judge.

If the finding, at the trial of the issue, either by the court or jury, be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof, but if the finding be that no agreement in writing providing for an arbitration was made, or there is no default in proceeding thereon, the proceeding shall be dismissed.

3:79A-3. Applications heard summarily. Applications made under this rule shall be heard summarily in the manner provided by the rules for the making and hearing of motions.

Source R S 2 40-16.

3:79A-4. Notice to vacate, modify or correct award; service; order. Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, as prescribed by rule for service of notice of a motion in an action, within 3 months after the award is filed or delivered. For the purposes of the motion any judge who might make an order staying the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

Source R S 2 40-21.

3:79A-5. Judgment upon award. Upon the granting of an order confirming, modifying or correcting an award, a judgment may be entered in conformity therewith in the court wherein the judge making the same sits.

Source R S 2 40-22.

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3:79A-6. Papers filed with clerk; judgment docketed. The party moving for an order confirming, modifying or correcting an award shall, at the time the order is filed with the clerk for the entry of judgment thereon, also file the following papers

- a The submission,
- b The selection or appointment, if any, of an additional arbitrator or umpire and each written extension of the time, if any, within which to make the award,
- c The award,
- d Each notice, affidavit or other papers used upon an application to confirm, modify or correct the award, and a copy of each order made upon such an application

The judgment may be docketed as if rendered in an action

Source R S 2 40-23

3:80-1. Punishment for contempt. The court shall not punish for contempt in any case except for the

- a Misbehavior of any person in the actual presence of the court,
- b Misbehavior of any officer of the court in his official transactions, and
- c Disobedience or resistance by any court officer, or by any party, juror, witness or other person to any lawful writ, process, judgment, order or command of the court

Source R S 2 15-1

Renumber Rules 3 80-1 and 3 80-2 and make them 3 80-2 and 3 80-3

3:80-4. Trial judgment. The court in its discretion may try the issue without a jury, but this rule shall not supersede any statutory right to trial by jury. Upon the hearing of any charge for contempt other than a contempt stated in Rule 3 80-2, the court shall determine whether the contempt was criminal or civil in nature, or both. Where the contempt is primarily civil in nature and the person in contempt shall have disobeyed a judgment, order or process of the court, he shall stand committed and remain in close custody until the judgment, order and process is obeyed and performed and until such fine as may be imposed for his contempt in accordance with section 2A 15-1 of the statutes, with costs, is fully paid, or until the further order of the court. Upon the finding of guilt in a proceeding criminal in nature, the court shall enter an order fixing the punishment

Source R S 2 15-7, as to third sentence see R S 3 15-7

3:81A-1. Upon presentation of a verified petition to a judge of the superior court or a county court, setting forth the necessity for the production as a witness in a pending cause of a person then a prisoner, such judge may, upon being satisfied that the petition is filed in good faith, direct that such prisoner be produced as a witness in such pending cause and may make ap-

propriate provisions for the safe custody and return of such prisoner

3:84-4. Amendment of complaint or counterclaim.

- a In any matrimonial action, an amendment to (same as present language)

3:86-2. Correspondents' right to be made a party. Any person named as a correspondent in any pleading seeking relief on the ground of adultery, shall be made a party, upon his or her due application to the court, subject to such terms and conditions as the court may prescribe

Note of Reporter 1 Present Rule 3 86 should be renumbered to 3 86-1

2 Foregoing rule is in substitution of 2 50-16

3 Present Rule 3 86(a) should be amended to include the word "within" before the word "10" in order to clarify the time period

3:87-12. Attorney in uncontested actions. In all uncontested action where the court may deem it necessary or proper, a disinterested attorney may be assigned actively to defend the action

Note of Reporter This rule is taken from R S 2 50-17 and is deemed to be appropriately covered by the rules, rather than statute

3:88-1. Complaint. The action for probate of a will, for letters of administration, letters of administration with the will annexed, letters of substitutionary administration, or letters of substitutionary administration with the will annexed, shall be commenced by filing a complaint, stating the

- a Plaintiff's residence;
- b Name and date of death of the decedent, his domicile at his death and date of his will, if any,
- c Names and addresses of his spouse, heirs, next of kin, and other persons, if any, entitled to letters, and their relationships to him, and, to the best of the plaintiff's knowledge and belief, identifying any of them whose names are unknown and stating further that there are no other heirs and next of kin, or as the case may be,
- d Ages of any minor heirs or next of kin, and in an action for probate of a will, whether the testator had issue living when the will was made, and whether he left any child born thereafter or any issue of such after-born child, and the names of after-born children or their issue, if any,

e And whether or not a caveat has been filed with this court or (except in an action for substitutionary letters) the surrogate of the county where the decedent was domiciled at his death

Except in an action for substitutionary letters, there shall be filed with the complaint a certificate of the testator's or intestate's death or other competent proof thereof, unless for good cause dispensed with, and in all actions where a bond is required of the person applying for letters, there shall be filed with the complaint an

affidavit of the value of the personal estate
The complaint shall be recorded by the clerk

Note of Reporter As to the change in paragraph (d)—ages of adult children have been required in the present and the 1941 probate rules, so as to ascertain whether a will made more than 21 years ago was void wholly or pro tanto under R S 3 2-15 and 3 2-16 This is an unsatisfactory method of ascertaining that matter The above change in paragraph (d) of the rule aims to bring out the matter clearly In order to provide for the change, the surrogate's printed form of complaint in a probate action could include the following statements "The said testator never had issue" and "The said testator had issue living when he made the said will, and no children were born to him thereafter"—striking out the inappropriate sentence, or changing it to meet the fact

As to the change in paragraph (e) and the last paragraph—these changes eliminate in an action for substituted administration with or without the will annexed certain requirements which are inappropriate in those actions

3:88-2. Renunciation by or notice to next of kin. If the application for the letters specified in Rule 3 88-1 is made by the person first entitled thereto, no renunciation or notice shall be required; but if the application is made by any other person, the plaintiff shall file

a The renunciation of all competent adult persons whose right to the letters is prior or equal to that of the person whose appointment is sought. Each of the renunciations shall contain a request that the letters issue according to the application

b Or proof that at least 10 days' notice of the application has been given to all such persons residing in the state who have not renounced, and that 60 days' notice, or such notice not less than 10 days in length, as the court may by order direct, has been given to all of them who reside without the state If in an action for letters of administration with the will annexed, it appears that the decedent left a will naming an executor who has not renounced, proof shall be submitted showing that like notice has been given to him Notice to a resident or nonresident of the state may be served as a summons is required to be served or may be sent by unregistered mail to his last known address

c And where the name or address of any of the persons referred to in paragraph (a) above is not known, then an affidavit of inquiry as to such names or addresses, which affidavit and inquiry shall be made as required by Rule 3 4-5(b)

In any case the court in its discretion may require the plaintiff to give notice to interested persons other than those entitled to letters

Note of Reporter The above changes are minor except possibly as to the matter of sending notice by unregistered mail As to that, see the Note of Reporter to Rule 3 5-2

3:88-3. Depositions of nonresident witnesses. If any subscribing witness to a will of any person resident or nonresident in this state at his death shall reside or be out of this state, the court may issue a commission authorizing the taking of the deposition of such witness The com-

mission may be directed to the judge of any court of law, mayor, recorder, or other chief magistrate of any city or town, where such witness may be found, or to any consul or vice-consul of the United States, stationed in any foreign country, or if specially deputized by the court, any notary public, commissioner of deeds, or attorney at law of this state When the testator was resident in this state at his death, the commission shall be annexed to the will and sent by registered mail, but the court may require the will to be photostated or otherwise photographed and a copy so made to be filed with the clerk The deposition of such witness shall be taken under oath and shall be certified by the person to whom the commission is directed

Renumber Rules 3 88-3 and 3 88-5 and make them 3 88-5 and 3 88-7

Source R S 3 2-25, 3 2-44, and cf 3 2-25 5, L 1948, c 122, §1

Note of Reporter The surrogates in some counties as a matter of practice retain copies of wills where the original will is sent out with a commission, and they are required to do so where the surrogate of another county is deputized to take a deposition under C 3 2-25 5, L 1948, c 122, §1

3:88-4. Use of photostatic copy where will is probated in another state. When the will of any person resident in this state at his death has been probated in another state, jurisdiction or country under the laws of which it cannot be removed therefrom, a photostatic copy thereof attested and certified under Rule 3 44 may be admitted to probate in lieu of the original will, or if, under the laws thereof, the will can be removed to this state for probate but cannot remain in this state for permanent filing, a photostatic copy thereof attested and certified under Rule 3 44 shall be substituted for the original will after it has been probated here

Source R S 3 2-46 to 3 2-48

Note of Reporter Further see 2A 7-23

3:88-6. Proceedings where will is discovered after administration granted. Where administration shall have been granted by judgment of this court and afterwards a will shall be offered for probate, or where probate of a will shall have been granted by judgment of this court and afterwards a later will shall be offered for probate, the plaintiff offering such will, may move, without notice, for an order directed to all persons interested, returnable to this court, requiring them to show cause why probate of such will should not be granted If probate is granted on the return of the order to show cause, the court shall require the administrator or prior executor to make final settlement of his account, and shall make such order in relation to his commissions as shall be just and equitable

Source Rule 3 88-4

3:88-8. Probate of will of nonresident probated in another state or country. When any

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will of any person nonresident in this state at his death shall have been admitted to probate in any state of the United States or other jurisdiction or country, any person desiring to do so may institute an action for its probate for any purpose by filing a complaint in the form provided by Rule 3 88-1, together with a copy of the will, or of the record thereof, and the certificate or judgment for probate, attested and certified pursuant to Rule 3 44. The will may be proved either by the proofs appearing in the probate record similarly certified, or by a deposition taken under a commission, or otherwise, and letters may be issued thereon.

Source R S 3 2-27, 3 2-40

Note of Reporter In the superior court the will has to be executed according to the law of the testator's domicile in order to pass title to personalty in this state, and according to the law of this state in order to pass title to real estate in this state. The will and record may be certified under Rule 3 44-1 or it may be exemplified, as permitted by Rule 3 44-3, under the acts of congress as has heretofore been done (28 U S C, § 68).

3:88-9. Probate of will of nonresident decedent not probated elsewhere. The complaint in any action for probate of a will of any person not resident in this state at his death, which has not been probated elsewhere, shall not be filed until 3 months have elapsed after the death of the decedent. It shall be in the form provided by Rule 3 88-1, adding however that the decedent was entitled at his death to real estate situate in this state or personal estate or evidence of the ownership thereof situate therein at the time of probate, as the case may be, together with the names and addresses of all parties in interest, so far as the plaintiff is able to ascertain them, and stating that the will has not been admitted to probate at the place in which the decedent was resident at his death and that no proceedings are there pending for the probate of the will. A copy of the will shall be annexed to the complaint.

Source R S 3 2-41 to 3 2-43, and C 3 2-45 1, L 1942, c 335

3:88-10. Consolidation when one will is offered for probate before a surrogate or county court and another is offered in superior court. Whenever an action for the probate of a will is pending in the surrogate's or county court of any county and an action for the probate of an earlier or later will of the same testator is pending in the superior court, the superior court shall take jurisdiction of the controversy and consolidate the actions. Upon the filing of a certified copy of the order of consolidation with the surrogate of the county, the surrogate shall forthwith transmit to the clerk of the superior court a record of the proceedings before such surrogate or before the surrogate and county court. Thereafter the proceedings in the superior court with respect to the probate of such wills shall be the same as if they were originally offered for probate in the superior court.

Note of Reporter This rule is derived from R S 3 2-20

3:88-11. Notice of probate of will. Within 60 days from the date of the probate of any will, the executor or administrator with the will annexed shall mail to all beneficiaries under the will, at their last known post-office addresses, a copy of the will and a notice in writing that the will has been probated, and the place and date of probate.

Note of Reporter This rule is taken from C 3 7-31, L 1944, c 238, §1. It has been suggested by the reporter who worked on this chapter of Title 3 that the statute presents no sanction and he therefore proposes a rule reading as follows:

"Before letters testamentary or letters of administration with the will annexed are issued upon any will, the executor, executors or administrator with the will annexed, shall notify all beneficiaries mentioned in said will, in writing, by mailing the same to the last known post-office address of such beneficiaries, that said will has been probated, and the place and date of probate thereof, and shall file proof by affidavit of such mailing."

This rule would slow up the issuance of letters, as the notice must be sent out and proof of the mailing filed after the probate judgment has been entered, the purpose served by notifying the beneficiaries does not seem to warrant this delay.

The reporter makes reference to the New York statute, from which C 3 7-31 was taken. That statute is section 146 of the Surrogate's Court Act which requires notice to the beneficiaries under the will that the will has been "offered for probate or probated." Under such a provision an executor could probate the will within 10 days following the testator's death and then give notice thereof to the beneficiaries, and on the eleventh day secure his letters. Even this provision would add red tape to the present proceeding and would serve, it has been urged, no great purpose.

3:89-2. Trustees of inter vivos trusts. When a trustee is appointed by order of court or by deed or otherwise as to any trust not created by will, the court on the filing with it of a complaint and of his acceptance of the trusteeship, may either by judgment without notice or in a summary manner pursuant to Rule 3 79, direct the issuance of letters of trusteeship. To the complaint shall be annexed a copy of any instrument under which the trustee is acting.

Note of Reporter The word "order" is reserved generally for interlocutory adjudications. Even an *ex parte* final adjudication is spoken of as a judgment. Cf. a judgment barring creditors of a decedent.

3:89-4. Proceeding to declare an absentee dead, or for an appointment or action with regard to his property. When a complaint is filed in an action to declare an absentee dead under chapter 42 of Title 3A of the Revised Statutes, or in an action to appoint a trustee, for all or part of an absentee's property under chapter 41 of that title, there shall be filed with such complaint an affidavit of inquiry. The inquiry shall be made by the plaintiff, his attorney actually intrusted with the conduct of the action, or by the agent of the attorney, it shall be made of any person who, the inquirer has reason to believe, possesses knowledge or information as to the absentee's residence or address or the circumstances of his disappearance or of the matter inquired of, the inquiry shall be undertaken in person or by letter, and the inquirer shall state that an action has been or is about to be com-

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menced with regard to the absentee, and shall state the purpose of the action, and shall further state that the object of the inquiry is to find the absentee first, when made by letter, postage or a postage stamp shall be enclosed sufficient for the return of an answer. The affidavit of inquiry shall be made by the inquirer, it shall fully specify the inquiry made, of what persons and in what manner, so that by the facts stated therein it may appear that diligent inquiry has been made for the purpose of finding the absentee.

The complaint shall state plaintiff's immediate purpose in bringing the action. There shall be annexed to the complaint, so far as known to plaintiff, an inventory of the absentee's personal property, a statement of the real estate or interests therein owned by the absentee, a statement of any insurance payable on death of the absentee, and a statement of any interest in any property which interest expires or is contingent upon the death of the absentee.

The plaintiff in his complaint may, notwithstanding the provision of any other rule, join as many claims as he has, whether against defendants in the action for the declaration of death, or against other persons, for the recovery of property, or for the obtaining or confirmation of any rights, to which the plaintiff would be entitled by reason of the absentee's death; provided that the court have jurisdiction of the subject matter of these additional claims.

Note of Reporter It would seem to be just as important to make sure that a man could not be found, when he is being declared dead or when his property is being assigned to a fiduciary, as when he is being made a defendant. People often get separated from their spouses and families, and it does not follow that complaints filed even by spouses or other members of the family would necessarily be filed only after diligent inquiry.

The language of the above proposed rule follows in general that of Rule 3 4-5(b) as to the affidavit of inquiry.

The above proposed rule also provides for statements of purpose and of property affected so that the court can get a better picture of what is at stake as to the various parties and of factors and motives working toward and away from possible fraud.

3:90-2. Signature of complaint. When an action is brought for letters of guardianship of an orphan of the age of 14 years or upwards or of any infant of that age whose father has absconded or absented himself from the state for 2 years, leaving the infant without sufficient provision for maintenance and education, or of any infant desiring the appointment of a special guardian in order to enlist in the armed forces of the United States in time of war, the complaint shall be signed by the orphan or infant in the presence of a judge of the court or any surrogate or deputy surrogate. If the orphan or infant is out of the state the complaint shall be signed by him and acknowledged in the manner provided for deeds, either in the presence of a judge of the court of record or, in a foreign country, in the presence of an officer authorized

to take acknowledgments pursuant to section 46 14-8 of the statutes. In every other action for letters of guardianship of an infant, the complaint shall be signed by the party applying for the letters or some other person in interest. Source R S 3 7-24, 3 7-25, 3 7-27, 3 7-30, and C 9 2-12.

Renumber Rules 3 90-3 and 3 90-4 and make them 3 90-4 and 3 90-5.

3:90-3. Renunciation of notice. If application for letters of guardianship of an orphan under 14 or of guardianship of the estate of an infant whose father is living is made by the person first entitled to the letters, no renunciation or notice shall be required, but if made by any other person, the plaintiff shall file.

a The renunciation of all competent adult persons whose right to the letters is prior or equal to that of the person whose appointment is sought and the renunciation of the person or persons, if any, standing in loco parentis to the orphan or infant, and also of the persons with whom the same resides. The renunciations shall contain a request for the issuance of letters according to the application.

b Or proof that at least 10 days' notice of the application made by the complaint has been given to all such persons residing in this state who have not renounced, and that 60 days' notice or such notice, not less than 10 days in length, as the court may by order direct, has been given to all of them who reside without this state. Notice to a resident or a nonresident of the state may be served as a summons is required to be served or may be sent by unregistered mail to his last known address.

c And where the name or address of any of the persons specified in paragraph (a) above is not known, then an affidavit of inquiry as to such names or addresses, which affidavit and inquiry shall be made as required by Rule 3 4-5(b).

In any case the court in its discretion may require the plaintiff to give notice to interested persons other than those entitled to letters.

Note of Reporter See Note of Reporter to Rule 3 88-2.

3:90-5. Strike out Rule 3 90-5 reading as follows:

"3:90-5. Acceptance of guardianship. Before letters of guardianship shall issue to any applicant therefor, he shall accept the appointment."

Note of Reporter This rule is to be embodied in the amendment to Rule 3 92-6. See Note of Reporter thereto.

3:91-1. Complaint. Every action for the determination of mental incompetency resulting from idiocy, insanity, lunacy, unsoundness of mind or habitual drunkenness of a person and for the appointment of a guardian for that person, other than an action under the uniform veterans guardianship law (see Rule 5 3-9), shall be

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brought pursuant to Rule 3 91 The complaint shall state the

a Name, age, domicile and address of the plaintiff, his relationship to the alleged incompetent and, if he is not the spouse or next of kin of the incompetent, his interest in the action,

b Name, age, domicile and address of the alleged incompetent,

c Name, domicile and address of his spouse,

d Names and addresses of his children, parents and nearest of kin, with the ages of the children,

e Name and address of the person or institution having the care or custody of the alleged incompetent,

f For what period or periods of time he has lived in any institution, and if he has been committed or confined to an institution the date of the commitment or confinement, and by what authority committed or confined

Inquests upon commission are superseded.

3:91-6(a). Amend Rule 3 91-6(a) to read as follows: "Where the total personal and real estate of the alleged incompetent is not in excess of \$2,000 in value and he has been confined in a public mental institution for at least 6 months prior to the hearing, the court without a jury may, after taking testimony in open court, appoint a guardian for him and fix the amount of the guardian's bond"

3:91-7. Appointment of guardian for nonresident incompetent. In a summary action for the appointment of a guardian for a nonresident who has been or shall be found to be a mental incompetent, there shall be exhibited and filed with the court an exemplified copy of the proceedings or other evidence establishing the finding. If the duly appointed guardian, trustee or committee of the mental incompetent in the state or country wherein the finding was made is the plaintiff in the action and applies to be appointed guardian in this state, the court may forthwith appoint him such without issuing an order to show cause or requiring notice to be given.

Source R S 3 7-50 and 3 7-52

3:92-1. Proof required that no caveat has been filed or dispute has arisen in surrogate's court. This court shall not grant probate of a will, nor letters of administration or of administration with the will annexed or of guardianship of an infant, unless there is filed with the court a certificate of the surrogate of the county where the testator or intestate resided at his death or the infant resides, dated not more than 5 days prior to the filing of the complaint, stating either that no caveat against the grant has been filed in his office or dispute with respect thereto has arisen therein, or reciting the names of the caveators or disputants. When a surrogate issues a certificate, he shall make a notation thereof in his docket

Note of Reporter The above rule has been taken from R S 3 2-21 having to do with the probate of a will,

and prerogative court Rules 10 and 27 having to do with administration and guardianship. When the surrogate issues his certificate under this statute or rules, he in most counties today makes a notation in the docket, and thereafter any person contemplating proceedings in the surrogate's court is put on notice that there might be an action pending in the superior court.

Rules 3 88-1(e) and 3 90-1(c) provide for a statement in the complaint as to whether or not a caveat has been filed with the surrogate, but the above certificate serves, of course, the additional purpose above stated,—namely, it notifies the person searching the surrogate's records of the possibility of a superior court action.

3:92-2. Caveat. In any action for the probate of a will or the issuance of any letters, where a caveat is filed with the court before the entry of judgment, the clerk shall not enter judgment unless the court otherwise orders. In any action for the probate of a will or the issuance of letters, if there be good cause, or if before the entry of judgment a caveat is filed with this court or a surrogate, or if a dispute over the matter has arisen in the surrogate's office, the court may make an order, on its own motion or on motion without notice, directed to the caveator, if any, and all other persons in interest, requiring them to show cause why the probate or letters sought should not be granted or denied, as the case may be. The order to show cause may be served as provided by Rule 3 79-3, but without serving the complaint or other papers in the action.

Note of Reporter This is substantially the same as Rule 3 92-1 as it presently appears except for a provision for giving notice to any caveator or disputants in the surrogate's office.

Here, unlike Rule 5 3-3, the caveator and the plaintiff cannot be constituted by rule the sole persons in interest to the exclusion of other persons in interest, for if judgment should be rendered against the caveator, another person in interest might then seek to relitigate the question under Rule 3 88-5 (to be renumbered Rule 3 88-7). In the superior court, therefore, when a caveat is filed, the plaintiff if he desires to proceed with the action must give notice to all beneficiaries under the will, heirs and next of kin.

Renumber present Rule 3 92-2 and make it 3 92-3

3:92-4. Assessment of damages on fiduciary's bond. If an action on any bond given by a fiduciary is brought in this court, an interlocutory judgment may be entered establishing liability on the bond, and proceedings for the application of the moneys due thereunder may be undertaken in the action and determined by the final judgment therein.

Note of Reporter It would seem to be efficient, where the action on the bond is brought in the superior court, to provide for the assessment of damages in the same action. In fact, under the constitution, the superior court is obliged to dispose of equitable and legal issues between the parties in the same action. This could not be done conveniently in the county court because the county clerk would be concerned with the action on the bond, while the surrogate would be concerned with both the assessment proceedings and the accounting necessary in connection with those proceedings.

3 92-5. Satisfaction of judgment on fiduciary's bond; title of proceeding. If judgment on a

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fiduciary's bond is entered in an action in the superior court, the petition for an order directing the satisfaction of the judgment, and all proceedings thereon, as provided for in sections 2A 26-218 to 2A 26-221, inclusive, of the statutes, shall be entitled in the action. An application for discontinuance of the action before judgment, as provided in section 2A 26-224 of the statutes, shall also be entitled in the action.

Note of Reporter Under the old practice judgment was recovered on a fiduciary's bond in the law court and then, if the judgment was to be satisfied, a separate proceeding had to be undertaken in the prerogative court. See R S 3 8-21 et seq. The statutes now seem to require separate proceedings on petition in the superior court. See C 2 26-218 et seq. If the superior court controls the assessment of damages in the action on the bond, and in that proceeding must give notice to all persons in interest, it should also control in the same action the satisfaction of the judgment on the bond, which might require further notice to the same persons in interest.

3:92-6. Change Rule 3 92-3 to read as follows.

3:92-6. Letters signed by clerk; acceptance of guardianship. Letters testamentary, of administration, trusteeship and guardianship, both as to infants and incompetent persons, shall be signed by the clerk. Before letters of guardianship shall issue to any applicant therefor, he shall accept the appointment.

Note of Reporter Rule 3 90-5 now requires an acceptance of office by a guardian of an infant, but not by a guardian of an incompetent. If there is any virtue in an acceptance in one case, the same formality should be required in the other.

3:92-7. Filing transcripts of will and letters of administration or guardianship in surrogate's office. When a will is admitted to probate or letters of administration or guardianship are granted by the superior court, the executor, administrator or guardian shall, or any person in interest may, file in the office of the surrogate of the county in which the testator or intestate resided at his death or in which the ward resides, a copy of the will, the proofs thereof, the judgment for probate and, in any case, the letters issued, which transcripts shall be duly certified by the clerk under the seal of the superior court and be recorded by the surrogate in his office. Source 2 1C-13 and 2 1C-14, L 1948, c 364, p 1464, §13 and §14.

3:94-2. On order to show cause. If the court so directs, accounts of guardianships, trustees or of any person other than an executor, trustee, administrator or guardian whose letters are issued by the surrogate or county court, may be settled in a summary manner on order to show cause made pursuant to Rule 3 79. Accounts of non-testamentary trustees may be settled on action pursuant to chapter 108 of the Laws of 1938 except that the action shall be proceeded upon in a summary manner on order to show cause under Rule 3 79. In any case the order to show cause shall state the amount of commissions

and attorneys' fees, if any, which will be applied for.

Note of Reporter Rule 3 95-3 requires that accounts settled on notice shall show the amount of commissions and attorneys' fees applied for, but there is no similar provision where an account is settled on order to show cause. In form the order to show cause will require the parties in interest to show cause why commissions and attorneys' fees in stated amounts should not be allowed.

3:94-4. Actions to compel account. Where any executor, administrator, guardian or trustee who may settle his account under Rules 3 94-1 and 3 94-2 fails to render the account or when any executor, administrator or guardian fails to file an inventory within the time allowed by law or order of this court, an action may be brought in a summary manner under Rule 3 79 to compel him to settle his account or file an inventory, as the case may be, and in special circumstances any person may be compelled to settle his account in a plenary action.

Note of Reporter The above change in the rule is designed to provide the procedure in order to compel the filing of an inventory.

3:95-5. Audit and report on accounts. In every action for the settlement of an account, whether of fiduciaries or other persons and whether settled on notice, order to show cause or in a plenary action, the account shall be audited by the clerk of the court and placed on file at least 20 days previous to its presentation to the court, and a report upon the audit shall be made to the court on the day noticed for settlement or at such subsequent time to which the hearing may have been adjourned. The report shall specify the derelictions, if any.

Note of Reporter "At least 20 days previous to its presentation to the court", and "on the day noticed for settlement or at such subsequent time to which the hearing may have been adjourned" are suggested new matter inserted in place of R S 3 10-13.

3:95-6. Exceptions. In all actions for the settlement of accounts, other than plenary actions, any interested person may on or before the return of the notice or order to show cause, or within such time as the court may allow, serve upon the accountant exceptions to any item in or omission from the account. The exceptions shall be in writing signed by the exceptant or his attorney, and shall state particularly the item or omission excepted to, and modification sought in the account and the reasons for the modification.

Exceptions to a guardian's intermediate account may be taken as stated in section 3A 10-11 of the statutes.

3:96-4. Attorney's services as including preparation of the account. Attorneys' fees allowed on the settlement of account may include an allowance for services in the preparation of an account, where, in fact, the attorney actually prepares the account to be submitted in an accounting action. However, nothing in this rule shall be taken to relieve the fiduciary of the obli-

gation of keeping proper accounts or to permit the attorney to be compensated for keeping the same

3:97-1. Where an account is about to be settled. Where an account is to be settled by action brought on notice or order to show cause, the plaintiff in his complaint may apply to the court for directions as to the distribution of the estate. If such an application is made, notice thereof shall be given either in the notice of the settlement of the account which is mailed to persons in interest or as the court may order; but the court shall not render judgment on the application for directions until after the account is settled.

Note of Reporter The reason for publication of notice in actions brought on notice for the settlement of accounts is to let creditors know so that they can take exceptions, other parties in interest receive notice by mail. It would seem that creditors are less interested in the distribution of an estate, for there is no attempt to give them notice of the action for distribution (except as they have had published notice of the accounting action which preceded it). Hence it is provided in this rule that where an account is settled by action brought on notice, notice of the application for distribution shall be given only in the notice of the settlement of the account which is mailed, notice of the application for distribution need not be included in the notice of the settlement of the account which is published.

3:97A-1. Order to compel production of purported will. An action for the discovery or production of any paper purporting to be the will of any decedent, which has not been offered for probate, may be instituted by any person in interest by filing a complaint alleging that he believes that any person has the paper in his possession or has knowledge of its existence or whereabouts. Upon the return of an order to show cause made as in other summary actions, the court may order such person to appear before it and make discovery as to his possession or knowledge of the same, by the examination of such person and other witnesses, and may order any such person having in his possession any such paper, to lodge the same with the court for probate.

Source Cf R S 3 2-28

3:97A-2. Approval of compromise. The complaint of the fiduciary in an action for the approval of a compromise of a claim shall state the nature of the claim and the circumstances justifying the compromise, and shall have annexed to it a copy of the writing setting forth the terms and conditions of the compromise. If pending the action the fiduciary applies to the court for approval either of a modification of the compromise, or of another compromise, agreed upon in writing, the court shall, if satisfied that it is in the interests of all persons interested, approve it, provided due notice of the application has been given to such persons.

3:98-1. Notice to creditors to present claims. Where an order under R S 3A 25-3 or 3A 25-52 requires public notice to be given to creditors

to present their claims within a limited time, the notice to be published shall state that the order has been made, the date thereof, on whose application, in what court and what directions are thereby given. The order need not be published, but the notice shall be advertised at least once a week for 5 weeks in such on or more newspapers of this state as may be directed in the order, the first advertisement to be made within 20 days after the date of the order. Any further notice shall be given that the court may direct. Neither the order nor the notice need be set up or posted.

3:98-2. Notice to creditors of insolvent estates. In an action as to an insolvent estate, after the time has expired under the order referred to in Rule 3 98-1 and after the account, inventory and report of claims have been filed, the executor or administrator shall give to all creditors who have presented claims and all interested persons other than creditors, notice of the filing of the account, inventory and report and of the time and place of the application to have the estate adjudged insolvent. The notice shall be given not less than 1 month before the making of the application and may be sent by mail to the last known address of each such creditor or person whether he be a resident or nonresident of the state. The notice shall state that such creditors and persons shall file their exceptions to the account, inventory and report before the time of the application or within such time as the court may allow. The notice need not be set up or posted.

Note of Reporter The sentence, "The notice shall state that such creditors and persons shall file their exceptions to the account, inventory and report before the time of the application or within such time as the court may allow", which it is proposed to have amended into the rule, merely states the existing law. But it is rather a matter of implication than of any express provision, and the creditors should have express notice of the situation.

3:99-2. Qualifications. Qualifications of executors and administrators and acceptances of trusteeships and guardianships may be taken without the state before any person authorized under Rule 3 88-3 to take the deposition of any subscribing witness to a will who resides without the state, and when the qualification of an executor or an administrator with the will annexed is taken without the state, the will need not be annexed to the qualification. Such qualifications and acceptances may be taken within the state before the court or the clerk.

3:100-4. Certain plenary actions. Where a plenary action is brought by or against a fiduciary to account for the estate, real or personal, for which he is chargeable or for the construction of the will or other instrument by which he was appointed, or for the directions of the court as to his authority or duties, and where letters have been issued to the fiduciary by a court of this state, the venue in the action shall be laid by the plaintiff in the county in which the venue

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was laid in the action for the issuance of letters or, if letters were issued by the surrogate or a county court, then in the county in which he received his letters

Part IV.

RULES GOVERNING PRACTICE IN THE APPELLATE DIVISION OF THE SUPERIOR COURT.

3:104. Amend Rule 3 104 so as to include the following rules

3:104-2. Civil judgment and order docket. The clerk shall keep also a book known as a civil judgment and order docket in such form and style as may be prescribed by the administrative director with the approval of the chief justice, in which shall be entered, without any request, an abstract of each judgment or order for the payment of money made in the law division of the superior court and, when so requested in writing by any party thereto pursuant to law, an abstract of each such judgment or order made in the chancery division of the superior court, and of each decree or order for the payment of money or costs heretofore made or entered in the former court of chancery but not entered in the former supreme court, containing the following information

a The title of the court, the names at length of all the parties to such judgment, order or decree designating particularly against whom it is rendered, and the firm name of all copartnerships, if such appear in the pleadings,

b The style of the action and the amount of the debt, damages and costs recovered, which shall be entered in figures and words at length, and

c The date of the actual entry of such judgment, order or decree by notation thereof upon the civil docket

The entry required by this rule shall constitute the record of the judgment, order or decree and a transcript thereof duly certified by the clerk of the court shall be deemed plenary evidence of such judgment, order or decree

The clerk shall also make an entry upon the civil docket indicating the nature of every judgment or order and the date when the judgment or order was entered and showing execution of process

Source This rule is derived from L 1949, c 147, p 526, §1 (C 2 1A-16) which was an elaboration of Rule 3 104-2

Note of Reporter It would seem that the directions as to the form of the civil judgment and order docket should be contained in a rule and not a statute so that they be kept "fluid", the rule is more easily changed than the statute

3:104-3. Recording of judgments, orders and proceedings. The clerk shall record every judgment and appealable order and in actions in which any writ or other proceeding shall require the removal of the record of any judgment to any other court, or other circumstances render

it necessary, the clerk shall record also the proceedings in the action in full, by entering the warrants of attorney, process and return, pleadings, proceedings and judgment, so as to make a complete record thereof, which entry shall constitute the record

In each such case, the clerk shall enter on the civil docket and, when the judgment is entered therein, on the civil judgment and order docket, the date and place where the judgment is recorded in full as provided by this rule

The photographing and placing in suitable secured binders of photostats, or the microphotographing and development of the microfilm reel, or the placing of carbon copies in suitable secured binders of any pleading, judgment, order or any instrument filed with the clerk of the court, with a suitable index thereto, shall constitute a recording as required by this rule

Source C 2 1A-17, L 1948, c 327, p 1309, §3

3:104-4. Recording of judgments by confession. The clerk shall record by similar entry in the civil judgment and order docket all judgments by confession entered in his office and shall record in the manner provided in Rule 3 104-3 all documents filed or lodged with him to be recorded in his office in connection with the entry of any such judgment.

Source C 2 1A-18, L 1948, c 327, p 1309, §4

3:104-5. Docketing of judgments; recording of transcript and other documents. The clerk shall docket final judgments recovered or docketed in a county court, circuit court or court of common pleas, required by law to be docketed in his office, by similar entry on the civil judgment and order docket and shall record the transcript and other documents filed or lodged with him for record in connection with the docketing of any such judgment in the manner provided in Rule 3 104-3

Source C 2 1A-19, L 1948, c 327, p 1309, §5

3:104-6. Assignments of, postponement of lien of or warrant to satisfy judgments; recording; entry of satisfaction. The clerk shall enter upon the civil judgment and order docket, if the judgment is entered therein, and otherwise in the civil docket, a notation of the filing or lodging with him for record of any assignment of, postponement of the lien of, or warrant to satisfy, any judgment indicating when and where the same is recorded or filed. Such notation shall appear at a discernible place on or at the entry of such judgment in said docket. The clerk shall cause all such assignments, postponements and warrants to be recorded in the manner provided by Rule 3 104-3

When a judgment is satisfied, the entry of satisfaction may be made at any discernible place on or at the entry of such judgment on the civil judgment and order docket and upon any other record of such judgment

Source. C 2 1A-20, L 1948, c 327, p 1310, §6

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3:104-7. Indices. The clerk shall keep and maintain suitable indices in alphabetical order of the civil docket, civil judgment and order docket and the record of all judgments, assignments of judgments, postponement of the lien of judgments, or warrants to satisfy judgments, in such form as shall be prescribed by the administrative director with the approval of the chief justice
Source C 2 1A-21, L 1948, c 327, p 1310, §7

3:104-8. Notation of filing or lodging for record. Unnecessary
Source C 2 1A-22, L 1948, c 327, p 1310, §8

3:104-8. Wills and inventories received. The clerk of the superior court shall record, in alphabetical order, in a book to be by him provided for that purpose, the names of the testators of all wills which he may receive, together with the year in which such wills were proved. He shall file all such wills in his office, the wills of each year and county to be put by themselves, and marked with the year and county. The clerk shall, in like manner, record the names of all intestates, inventories of whose estate he may receive, and, in like manner, file such inventories
Source R S 2 30-3

Strike the present Rules 3 104-2 and 3 104-3, and renumber Rules 3 104-4 and 3 104-5 and make them respectively, 3.104-9 and 3 104-10

4:2-7. Review of convictions for contempt. Every summary conviction and judgment by the superior court in the law or chancery division, a county court or any inferior court for a contempt shall be reviewable de novo, both upon the law and the facts, by this court.

Source R S 2 15-3, as am L 1948, c 333, p 1318, §1
Note of Reporter Apparently even under the practice prior to September 15, 1948, an appeal was taken from an inferior police court directly to the old supreme court. In re Selick J. Mindes, 88 N. J. L. 117, 95 A. 743 (Sup. Ct. 1915). Further see Attorney General v. Verdon, 90 N. J. L. 494, 102 A. 66, 157 (E. & A. 1917); Bond Stores, Inc. v. Fleisher, 125 N. J. L. 79, 13 A. 2d 492 (Sup. Ct. 1940)

Part V.

RULES GOVERNING THE COUNTY COURTS AND SURROGATES.

5:2-4. Collection of penalties; appeals from penalties imposed by county district courts and municipal courts.

a Every county court having jurisdiction over the collection or enforcement of a penalty shall proceed in accordance with Rule 7 12A

b If the statute imposing the penalty provides for an appeal to the county court of the county in which the proceedings were had, the procedure upon such appeal shall be as follows

1 The party appealing shall, within 10 days after the judgment is rendered,

1 Serve, upon the opposite party and file with the court in which judgment is rendered, a written notice of appeal, signed by him or on his behalf, briefly describing the judgment

and stating that he appeals therefrom to the county court, and,

2 If the appeal be taken from a judgment imposing a penalty upon the appellant, deliver to the court, in which said judgment was rendered, a deposit in cash or a bond to the opposite party with at least 1 sufficient surety, in double the amount of the judgment, or if no money penalty or if imprisonment with a money penalty is imposed by the judgment, then in such sum not exceeding \$500.00 as shall be fixed by said court, conditioned to prosecute the appeal and to stand to and abide by such further order or judgment as may be made against the appellant

2 Upon the taking of such appeal and the delivery of such deposit or bond, the court in which the judgment appealed from was rendered shall forthwith order the release of the appellant, if he be committed or in custody and thereafter no execution shall issue upon said judgment and such appeal shall operate as a stay of any execution theretofore issued thereon

3 The court in which the judgment appealed from was rendered shall send a transcript of the proceedings and judgment in the said cause, under the hand and seal of the said court, together with the bond or deposit, if any, to the clerk of the county court to which such appeal is taken, within 10 days after the perfecting of such appeal as aforesaid

4 Within 10 days after the perfection of such appeal, the appellant shall apply to a judge of the county court to which the appeal has been taken for an order fixing the date of hearing. Written notice of the time of hearing shall be served on the opposite party at least 10 days before the date set for the hearing. If the appellant fails to apply to the court for such order or to give said notice, the court, unless good cause shall be shown, shall dismiss such appeal and enter judgment in the same terms as the judgment appealed from with costs of such appeal, if costs are allowed

5 The county court shall hear and determine such appeal de novo and in a summary manner and shall give judgment thereon with costs of such appeal if costs are allowed

6 Any judgment entered upon such appeal may be proceeded upon in the same manner as though the original proceedings had been instituted in said county court, and if judgment shall be given in favor of the appellant upon such appeal, any cash deposit made by the appellant on taking such appeal shall be returned to him and any such bond given by him shall be canceled

7 The procedure hereinbefore provided for appeal shall be available to 1 or any number of defendants against whom the judgment appealed from was rendered

c As used in paragraph b. of this rule, the

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word "court" shall be taken to refer to any county district court or a judge thereof, any municipal court or the magistrate thereof having jurisdiction over any summary proceedings for the collection or enforcement of a penalty

5:2-4. Strike out the following rule:

5:2-4. Waste; partition; account; dower; curtesy. All actions brought in the county court on summons or otherwise in accordance with Rules 3 75-1 and 3 75-2 shall be brought in the law division

Note of Reporter It is proposed that the jurisdiction formerly had by the orphans' court to entertain partition, dower and curtesy proceedings be abolished as they are very inefficient proceedings and practically never used. If they are abolished this rule is no longer needed

5:2-5. Service of subpoenas outside county; effect. Any county court, may, in a cause therein pending, issue subpoenas to compel the attendance of witnesses residing in any part of the state to give evidence, who, when duly served, shall be subject to all the provisions of Rule 3 45-5 of the rules governing the civil procedure in the superior court

Source R S 2 97-17, L 1900, c 150, p 365, §13 [C S p 2224, §13]

5:2-5. Attorney's fee on appeal or certiorari. The county court may, in its discretion, allow a reasonable attorney fee to the party prevailing in the trial of such appeal, which fee may be taxed in the costs and recovered against the unsuccessful party. In cases where appeal is made to the appellate division to review the judgment of the county court, the county court may allow a reasonable attorney fee to the party prevailing on the appeal, which fee shall be taxed in the costs and become a part of the final judgment in the cause, and may be recovered against the unsuccessful party. In cases where an appeal is taken from the judgment of the appellate division to the supreme court, the county court may allow a reasonable attorney fee to the party prevailing on the appeal to the supreme court for his services on the appeal, which fee shall be taxed in the costs and become a part of the final judgment in the cause, and may be recovered against the unsuccessful party

Source C 34 15-67, as am L 1945, c 97, §1

5:2-6. Appeal from judgment of wage collection division of the department of labor.

a The appeal from any judgment of the wage collection division of the department of labor may be brought on by either party on 10 days' notice to the other party or his attorney. Such appeals shall be heard and determined without a jury in a summary manner and judgment given and execution awarded thereon with costs, either on the affirmance or reversal of the judgment so appealed

Source R S 34 11-64

b Upon the trial of any such appeal either party may produce any witness not produced or

sworn in the court below, or any documentary evidence not offered or admitted in the court below, if otherwise legal and competent, without notice to the opposite party.

Source R S 34 11-65

5:2-7. Review of validity of lien against inmates of institutions. Application for a review of the lien provided in R S 30 4-80 1 shall be made on a duly verified complaint setting forth the interest of the complainant in the lien, all material facts and circumstances relating to the filing thereof, and the specific reasons for the review of said lien. At least 10 days' notice of the time, date and place of any hearing on a lien under review, and a copy of the complaint shall be given the institution claiming such lien

The court upon receipt of the petition provided for herein shall proceed to a full hearing of all facts and circumstances relating to the filing of any lien hereunder, and may, after due consideration, enter such order as it shall deem consistent with the facts in each case

5:3-1. Supreme court Rule 5 3-1 should be amended by deleting from exceptions the following.

"3.91. Actions for appointment of guardians of incompetents"

5:3-1. Amend Rule 5 3-1 to read as follows

5:3-1. Applicability of superior court rules.

Copy present rule but in the fourth line instead of "3 77-8" substitute "3 77-10"

Note of Reporter This is intended to cover reference to the new proposed Rules 3 77-9 and 10

5:3-2. Complaints. All complaints in actions for the probate of a will, for letters testamentary, letters of administration, letters of administration with the will annexed, letters of administration ad prosequendum, letters of substitutionary administration, letters of substitutionary administration with the will annexed, letters of guardianship with respect to an infant or letters of substitutionary guardianship with respect to an infant, shall be entitled in the surrogate's court of the county, and proceedings shall be taken thereon in that court except as provided by these rules. Petitions for administration pendente lite and complaints in actions for temporary administration, administration ad litem or other form of limited administration shall be entitled in the county court of the county, and proceedings shall be taken thereon in that court; but no such administration shall be granted without notice unless it clearly appears from specific facts shown by affidavit or by the verified petition or complaint that immediate, substantial and irreparable injury, loss or damage, will result to the applicant before notice can be served and a hearing had thereon. Such an order granted without notice shall give any party in interest leave to move for the discharge of the administrator on not more than 2 days' notice

Note of Reporter The change in this rule is proposed in order (1) to provide for the issuance of adminis-

tration pursuant to the new proposed act which will authorize the county court to issue same, and (2) to prevent the issuance of administration without notice except in the circumstances provided by Rule 3 66-1 for the appointment of a receiver without notice

5:3-3. Actions on caveat or on doubts as to a will. In any action in the surrogate's court referred to in Rule 5 3-2, where a caveat is filed with the surrogate of a county before the entry of his judgment, or a will propounded presents a doubt on its face, is lost or destroyed, is a nonresident's will which has not been probated elsewhere or is unattested pursuant to section 3A 2-7 of the statutes, the surrogate shall not act in the matter, except in accordance with the order or judgment of the county court of the county, but any person in interest may without notice or petition move before the county court of the county for an order directed to the other persons in interest, requiring them to show cause why the probate or letters sought should not be granted or denied, as the case may be. If such an action comes before the county court solely because of the filing of a caveat, the caveator and the plaintiff shall be deemed to be the sole persons in interest, or if the action comes before the court solely because of a doubt as to a provision of the will, the persons affected by the provisions and the plaintiff shall be deemed to be the sole persons in interest.

Note of Reporter 1 Where the will of a nonresident not probated elsewhere is propounded, the cause should come before the county court in accordance with the present practice. Moreover, where probate is sought of a will made by any person while in the military service of the United States in time of war pursuant to 3A 2-7 and the will is unattested, there should clearly be oral proof in the county court.

2 The insertion of the words "except in accordance with the order or judgment of the county court of the county" permits the county court to authorize proceedings to be continued in the surrogate's court, where it chooses—e.g. where a contested probate action is settled after the order to show cause issues.

3 The insertion of the words "or petition" makes it clear that no petition is needed in the county court when motion is made for an order to show cause. Verified petitions should be avoided where they are not needed.

4 The insertion of the words "or denied, as the case may be" permits the caveator to apply for an order to show cause. As the rule presently reads, it would appear that only the person desiring the grant of probate or letters could apply for the order to show cause.

5 Following Myers' Case, 69 N J Eq 793 (E & A. 1905), the caveator and the plaintiff are constituted by the rule the sole persons in interest. The practical consideration here is that where persons who otherwise would be indifferent to the controversy are served with an order to show cause, they feel called upon to look into the matter, leading thus into an unnecessary expense. Such persons in interest may under Rule 3 21 make themselves parties to the proceeding if they wish to. See Myers' Case, 69 N J Eq 793, 799 (E & A 1905), Bioren v Nesler, 76 N J Eq 576 (Prerog 1909).

If an action comes before the court not only because of a caveat but also, e.g., because a will propounded is lost, all persons taking under the will and heirs and next of kin, as well as the caveator, are under the proposed amendment necessary persons in interest.

5:3-4. Review of surrogate's judgment. Where judgment has been entered in any action before the surrogate of any county, any person ag-

grieved by the judgment may move before the county court of the county, on notice to the plaintiff, for an order directed to all persons in interest, requiring them to show cause why the judgment should not be set aside, provided however notice of the motion is served upon the plaintiff within 3 months after entry of the judgment in the action, or within 6 months thereafter in cases where the moving party resided out of this state at the entry of the judgment. If no such motion is served within the time limited, the judgment in every action stated shall be conclusive except where the person aggrieved by the judgment seeks relief therefrom under Rule 3 60-2 for reasons (4), (5) and (6) enumerated in the rule or for fraud upon the court or by independent action. The matter shall be heard in the county court de novo, as if no judgment had been entered in the surrogate's court.

Note of Reporter The addition of the last sentence brings this rule into conformity with the former practice under R S 3 2-52, which provided that

"Proceedings of Surrogates respecting the probate of a will shall be subject to appeal to the Orphans' Court and to proceedings thereon, as if the will had not been proved."

5:3-5. Review of other matters. If a dispute arises in the surrogate's court of any county, whether as to the right to letters or the existence of a will or as to any other matter and whether the dispute arises on application for probate or for letters or for relief from the judgment of the surrogate or otherwise, and in every action before that court, certified by the surrogate to be a case of doubt or difficulty, the surrogate shall not act in the matter except in accordance with the order or judgment of the county court of the county, but any person in interest may without notice or petition move before the county court of the county for an order directed to all other persons in interest, requiring them to show cause why the relief sought by him should not be granted. All actions under Rules 5 3-3, 5 3-4 and 5 3-5 before the county court shall be proceeded upon in a summary manner under Rule 3 79, except as otherwise directed by the county court and except that there shall be no complaint.

5:3-6. Actions for the settlement of accounts; no plenary actions. The accounts of executors and trustees under wills probated in the surrogate's, county or orphans' court of any county and of administrators and guardians appointed by any such court shall be settled on notice in the county court of the county pursuant to Rule 3 95; but if the court so orders, accounts of such guardians or trustees may be settled in a summary manner on order to show cause pursuant to Rule 3 79. Where any such executor, trustee, guardian or administrator fails to render his account or any such executor, guardian or administrator fails to file an inventory within the time allowed by law or order of a county court, an action may be brought in a summary manner under Rule 3.79 to compel him to settle his

account in that court or file an inventory, as the case may be. Accounts of non-testamentary trustees rendered pursuant to section 3A 10-15 of the statutes may be settled in a summary action, but in any such action the accountant shall annex to the first paper filed by him in the office of the clerk of the court a copy of the trust agreement, declaration of trust, transfer of property, or other writing creating such trust and setting forth the terms thereof.

5:3-7. Application to sell lands in counties other than the county in which letters are granted. Where an executor or administrator shall have been granted letters in the surrogate's, county or orphans' court of any county and he shall thereafter bring a proceeding for the sale of lands to pay debts in the county court of another county, he shall file with the petition in that proceeding a certified copy of the will, his letters and the inventory, if any, of the personal estate of the testator or intestate.

5:3-8. Discovery as to will. Any action pursuant to section 3A 2-28 of the statutes for the discovery or production of any paper purporting to be the will of any decedent, as stated in the statute, may be instituted by any person in interest by filing a complaint alleging that he believes that any person has in his possession or has knowledge of the existence or whereabouts of any such paper. Upon the return of an order to show cause made as in other summary actions, the court may order such person to appear before it and make discovery as to his possession or knowledge of the same, by the examination of such person and other witnesses, and may order any such person having in his possession any such paper, to lodge the same with the surrogate of the county for probate.

Source R S 3 2-28

5:3-9. Guardians for incompetents under uniform veterans guardianship law.

5:3-9(a). Action for appointment. An action for appointment of a guardian under the uniform veterans' guardianship law (section 3A 27 to 3A 33 of the statutes) as to a ward alleged to be a mental incompetent may be brought in the county court of the county wherein the ward resides by any person entitled to priority of appointment.

If there be no person so entitled or if the person so entitled shall fail or refuse to commence the action within 30 days after the mailing of notice by a federal agency to his last known address stating the necessity for the appointment, the action may be commenced in the county court by any person on his behalf residing in this state.

Source The above rule is taken from R S 3 28-3

Note of Reporter The provisions of Rules 5 3-9(a) to 5 3-9(f) are taken from the uniform veterans' guardianship law, and in view of the fact that it

is a uniform law adopted in many jurisdictions, the language is adhered to fairly closely.

5:3-9(b). Complaint in such action. The complaint in such an action shall set forth

a The name, age and place of residence of the ward,

b The name and place of residence of the nearest relative, if known,

c The name and address of the person or institution, if any, having custody of the ward,

d That such ward is entitled to receive moneys payable by or through a federal agency,

e The amount of money due and the amount of probable future payments, and

f That the ward has been rated incompetent on examination by a federal agency in accordance with the laws regulating the same.

Source R S 3 28-4

5:3-9(c). Proof of necessity for guardian of mental incompetent. In any such action, a certificate of the chief officer, or his representative, setting forth the fact that the ward has been rated incompetent by a federal agency on examination in accordance with the laws and regulations governing such agency, and that the appointment is a condition precedent to the payment of moneys due the ward by such agency, shall be prima facie evidence of the necessity for making an appointment under this rule.

Source R S 3 28-6

5:3-9(d). Determination of mental incompetency. The court may determine that the ward is mentally incompetent.

1 Upon the certificates, without other evidence, of 2 medical officers of the military service, or of a federal agency, certifying that by reason of the mental incompetency of the ward he is incapable of managing his property, or certifying to such other facts as shall satisfy the court as to such incompetency,

2 Upon proof being submitted, without other evidence, that the ward has been duly committed to an institution for the care of mental incompetents pursuant to the laws of this state,

3 If the ward is confined to a United States military hospital, then upon the certificates, without other evidence, of the chief medical officer of such hospital and of the ward surgeon of the particular ward thereof wherein such incompetent is confined, stating that the person is so confined by reason of mental incompetency and is incapable of managing his affairs.

4 In all other cases, the court shall determine the matter of mental competency, with or without a jury at the court's discretion. It shall call, unless they are called by other parties, at least 2 reputable physicians and other credible witnesses, and shall fully investigate the facts of the case, including the estate involved.

Source R S 2 29-2 to 2 29-5 inclusive

5:3-9(e). Appointment of guardian. Upon proof of notice duly given and a determination of

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mental incompetency, the court may appoint a fit and proper person to be the guardian and fix the amount of his bond. It shall be in an amount not less than that which will be due or become payable to him in the ensuing year. The court may from time to time require additional security.

Source R S 3 28-7 to 3 28-9

Note of Reporter No statement need be made in the rule, such as appears in R S 3 28-9, requiring the guardian to provide bond in the manner required by section 3A 8-1, 3A 8-1 requires the court appointing a guardian of any mental incompetent to put up a bond.

R S 3 28-9 requires a justification of any individual surety on the bond that he owns real and personal property worth, over and above his debts and liabilities, the amount of the bond. In all other situations a guardian is required to furnish a like justification except that the individual sureties must be freeholders, it seems that the sureties should be freeholders here too.

5:3-9(f). Termination of guardianship when ward becomes mentally competent. Where the court has appointed a guardian for the estate of a beneficiary, it may subsequently, on due notice, declare the beneficiary to be competent on proof of a finding and determination to that effect by the medical authorities of the military service or federal agency or on such other facts as shall satisfy the court as to the competency of the beneficiary. The court may thereupon discharge the guardian without further proceedings, subject to the settlement of his account.

Source R S 3 29-6

5:3-9(g). Complaint in action to have guardian receive additional personalty. The complaint in an action to authorize the guardian, pursuant to law, to receive personal property amounting to not more than \$2500 from any source other than the United States government shall set forth the amount of such property and the name and address of the person or institution having actual custody of the ward.

Source R S 3 33A-1

5:3-9(h). Notice to administrator of veterans' affairs. Whenever under the law the administrator of veterans' affairs is deemed a party in interest to any action in the county court of any county, notice in writing of the time and place of the hearing of the action shall be given not less than 15 days prior to the hearing (unless waived in writing) to the office of the veterans administration having jurisdiction over the area in which the county lies. The notice may be given by ordinary mail.

Note of Reporter The above provision has been requested by the veterans administration in conjunction with its recommendation of proposed new legislation, section 3A 27-6.

5:3-9(i). Definitions. The words appearing in this Rule 5 3-9, which are defined in section 3A 27-2 of the statutes, shall be given the meanings there assigned to them.

5:3-11. Applicability of other rules. The rules in part III shall, in so far as applicable, apply to all actions in the probate division of the

county court, but no plenary action may be brought on summons in that division. Rule 3 88-4 shall apply where judgment has been entered by the surrogate's court, the county court or the orphans' court. References in these rules to judgments heretofore made by the surrogate's courts shall include orders and decrees of those courts.

Source Rule 5 3-8

5:4-1.

Note of Reporter Add 3 88-3, 3 88-4, 3 88-8, 3 88-10, 3 92-1, but the rule shall not apply unless the will is executed in accordance with the laws of this state.

5:4-2. Commission to surrogate of another county. The surrogate of any county before whom a will is propounded may issue a commission annexed to the will directing the surrogate or deputy surrogate of any other county of the state to take the deposition of any subscribing witness who resides in the latter county. Rule 3 88-3 shall apply insofar as applicable.

Source C 3 2-25 5, L 1948, c 122, §1

5:5-1. Discharge of surety from liability for future acts of assignee under assignment for creditors. The application of a surety or the representative of any surety upon the bond of an assignee, acting under an assignment for the benefit of creditors, may apply to this court by motion to be relieved from further liability, whereupon the court shall hear the matter and may restrain the assignee from acting except in such manner as the court may direct to preserve the trust estate.

5:5-2. Court's advice as to administration of trusts. On the application of the assignee, under an assignment for the benefit of creditors, for the advice and direction of the court as to the administration of the trust, the court shall, upon such notice to the creditors as it may direct, hear the parties interested who may appear and shall make such order or judgment as the court shall deem advantageous to the trusts.

5:5-3. Discharge of surety from liability for future acts of assignee. The court shall, if the assignee renders an account in due form of law and files a new bond duly approved, make an order releasing such surety upon liability upon the bond for any subsequent acts or defaults of the assignee. In default of the assignee accounting and filing such new bond the court shall make an order directing such assignee to account in due form of law and that if the trust property shall be found or made good and paid over or properly secured such surety shall be discharged from any and all further liability as such for the subsequent acts or omissions of the assignee after the date of such surety being so relieved or discharged and discharging such assignee.

5:5-4. Reconveyance to assignor upon composition with creditors; proceedings. Where,

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after a general assignment for the benefit of creditors, the assignor shall make an agreement of compromise or composition with his creditors, the assignee shall present the matter to the court by a duly verified petition setting forth the agreement and praying for relief in the premises

On the making of the application, the court shall order all of the creditors of the assignor to appear on a certain day and show cause why the agreement should not be confirmed and the assignee be directed to reassign and reconvey the trust estate in his hands to the assignor

The assignor shall cause the order to be published at least once each week for 3 weeks, in such newspaper or newspapers as the court may direct, and shall also cause a copy thereof to be mailed, at least 10 days before the return day of the order, with the postage prepaid, to every creditor of the assignor, addressed to such creditor at his usual post-office address, so far as the assignor can ascertain the same

The court, on the return day of the order, or on such adjourned day as it may appoint, on being satisfied by affidavit or otherwise that the requirements of this section in relation to publication and mailing have been complied with, and upon being further satisfied that the agreement had been executed by all the creditors entitled to a dividend of the trust estate, shall order, upon such terms as it shall deem just, that the agreement be confirmed and that the assignee, within such time as said order shall specify, reconvey and reassign to the assignor all the trust estate in the hands of such assignee, in whatsoever form the same may be. The order may contain such directions regarding the reconveyance and reassignment as shall comport with the terms of the agreement

5:5-4. Clerk's docket. The county clerks of the several county courts shall keep a book or record, which shall be known as the "clerk's docket", in which shall be entered and docketed all pleadings and papers filed in every action or proceeding in the law division

The clerk's docket shall be indexed in the name of all persons against whom all actions or proceedings are instituted or commenced
Source C 2 1B-20, L 1948, c 365, p 1474, §20

5:5-5. Court may compel assignee to perform duties. The court may, from time to time, if necessary, by order and attachment, compel the assignee to proceed to the execution of his duties until final settlement and distribution. Such order shall issue to the assignee and his sureties

Source R S 2 34-18

5:5-5. Numbering of cases. Upon the entering of the first paper filed in any action or proceeding by the plaintiff's attorney, the clerk of either division of the court shall number the

same and shall notify the plaintiff's attorney of the number of the case so docketed, and, after the filing of any paper in the action or proceeding by defendant's attorney, shall likewise notify defendant's attorney of the number of the case so docketed. Thereafter the attorneys shall number every paper filed by them in every such action or proceeding before filing the same with the clerk

The clerk, after notification given as above provided, may refuse to file or receive any papers, unless the number of the action or proceeding appears thereon

Source C 2 1B-21, L 1948, c 365, p 1474, §21

5:5-6. Exceptions to claims; notice, hearing, and adjudication. On the filing of an exception to the allowance or rejection by the assignee of the claim or demand of any creditor, the court shall cause a notice to be served on said creditor, in such mode as the court may direct, and shall then proceed to hear the proofs and allegations of the parties and adjudicate such claim or demand. The evidence and proceedings before the court shall, upon the application of either party, be reduced to writing by the clerk or by a stenographer appointed by the court for that purpose

5:5-6. Minutes. The surrogate, as clerk of the probate division of the county court, shall keep regular minutes of all trials and proceedings in that division

Source C 2 1B-34, L 1948, c 365, p 1477, §34

5:5-7. Final and intermediate accounts of assignee. The final and intermediate accounts of the assignee under an assignment for the benefit of creditors shall be rendered in like manner and upon the same notice to creditors and others interested, including the sureties on the bond of the assignee, as is directed relative to final and intermediate accounts of executors and administrators, and exceptions to such accounts may be filed and shall be heard and determined by the court in like manner as accounts of executors and administrators

5:5-8. Discharge of sureties on bond of assignee after final distribution of estate. At any time after the expiration of 3 months from the filing of any final judgment of distribution made after the passing by the court of the final account of any assignee for the benefit of creditors, the court shall, upon application on behalf of any person interested, upon such notice to the other interested persons as the court may prescribe, and upon proof being made to the satisfaction of the court that the entire trust estate has been distributed according to law, and that no appeal from such orders of distribution is pending, make an order discharging the sureties of such assignee from any and every liability by reason of their having become such sureties

Source R S. 2 34-47

5:5-10. Sale of real estate by probate division. When a sale of real estate is ordered by the county court in the probate division, the officer or person authorized or directed to make the sale may, in his discretion and unless it is otherwise provided in the order of sale, make the same at public or private sale and on such terms as he may deem most advantageous to the parties concerned therein. Any such sale shall not be valid until it is confirmed by the court pursuant to the rules of the supreme court.
Source C 2 1B-45, L 1948, c 365, p 1479, §45

5:6-1. Discharge of insolvent debtor from imprisonment. When the imprisonment of an insolvent debtor shall be legal under the statute pertaining thereto, no order shall be made for the discharge of the person so imprisoned, unless a judge of the court shall be present and shall consent thereto

5:6-2. Time and place of hearing on debtor's complaint. On the presentation of a complaint by an insolvent debtor for discharge from imprisonment, the court shall fix a time and place for hearing the allegations for or against the liberation of the debtor, which time shall be not less than 40 days after the making of the application
Source R S 2 35-7

5:6-3. Service and publication of notice of hearing. The debtor shall cause written notice of the time and place of the hearing to be served, at least 30 days prior to the hearing, upon the attorney for the plaintiff at whose suit he is imprisoned or was arrested, the attorney for each creditor who has lodged a detainer with the keeper of the prison, and upon each of the creditors of the debtor, if residing within this state, either personally or by leaving the same at their usual places of residence. The debtor shall also have such notice inserted, once each week for 4 weeks, in a newspaper published at the county seat of the county in which the debtor is imprisoned or was arrested
Source R S 2 35-8

5:6-4. Exhibition by debtor of account, inventory and list of creditors. At the time and place appointed for the hearing, the debtor shall appear before the court and exhibit a just and true account of all his estate, both real and personal, either in possession, reversion or remainder, and the inventory and list of creditors mentioned in section 2A 35-6 of the Revised Statutes, with the amounts of debts due and owing to each of such creditors
Source R S 2 35-9

5:6-5. Examination by court of complaint, account, inventory and debtor; perjury. The court shall proceed to hear and examine into the truth of the debtor's verified complaint and the truth and justness and fairness of the account and inventory exhibited. And such examination shall also be upon interrogatories proposed by the court to the debtor, touching and concerning the

disposition of his estate and the truth and fairness of the account and inventory, and the debtor shall, on oath, or affirmation, make true and direct answer to all such questions

5:6-6. Examination of debtor as to imprisonment; stay of proceedings. The court shall also, at the time of hearing, examine the debtor touching his confinement, whether his imprisonment was compulsory or voluntary, and, if he has given a bond for the prison limits under section 2A 37-2 of the Revised Statutes whether he has, at any time between the day of his application to the court for a hearing and the time of his examination, been without the prison limits. To such questions, and any other questions as shall be asked by the creditor, with permission of the court, the debtor shall make full answer. If it appears that the confinement of the debtor was not compulsory or that he will not satisfactorily answer the questions proposed, or, in case he shall have given bond for the prison limits as above-mentioned, that he has been without the prison limits between the day of his application to the court for a hearing and the time of his examination, the court shall stay all further proceedings in the case
Source R S 2 35-11

5:6-7. Answer of creditors. Within 20 days after the filing of the debtor's complaint, for a discharge after the debtor has been remanded to prison pursuant to section 2A 35-15 of the Revised Statutes, but not afterwards, any 1 or all of the creditors of the debtor may file, in the office of the clerk of the court, his or their answer, to the effect that they are creditors of the debtor and that they deny the truth of the matters contained in the complaint, and thereupon the matter shall be at issue

5:6-8. Discharge of debtor in default of answer to complaint. In default of any answer by a creditor to the debtor's complaint filed as required by section 2A 35-18 of the Revised Statutes the clerk of the court shall, on the application of the debtor, enter in the minutes of the court a certificate that no answer has been filed by any creditor, and the debtor may thereupon produce to the court a copy of such certificate, under the hand of the clerk and seal of the court; and the court is empowered thereupon to make an order in writing under the seal of the court that the debtor, for default of answer filed, be discharged from custody, according to the provisions of the statute. This order shall be delivered to the clerk of the court, who shall enter the same on the minutes of the court and file it.
Source R S 2 35-19, R S 2 35-20

5:6-9. Trial of issue; evidence; verdict, judgment. The issue shall be tried in 1 action between the debtor named in the complaint as plaintiff and all the creditors named in the answer, but no other creditors, as defendants. On the trial of the issue all proceedings on the part

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of the debtor under the statute may be deemed competent, but not conclusive, evidence on his part. The debtor shall, in addition to such proceedings, prove and maintain the truth and legality of his case.

If the jury find a verdict for the debtor, the court shall render judgment that he be discharged out of custody according to the provisions of the statute. If the jury find a verdict for the creditor or creditors, the court shall render judgment that the debtor be continued in custody until delivered by due course of law.

Source R S 2 35-23

5:6-10. Costs on trial of issue. If the verdict and judgment be against the debtor he shall pay such costs as may be taxed by the court. If the creditor or creditors shall not maintain the issue on his or their part, he or they shall pay the costs by the court to be taxed.

Source R S 2 35-24

5:6-11. Discovery of assets; examination of debtor and others; refusal to attend or be sworn. For the more full discovery of the estate and effects of the debtor, the court shall have power, at the request of the assignee, to summon and examine on oath or affirmation the wife of the debtor and every other person known or supposed to detain any part of the debtor's estate or effects, or to be indebted to him. The examination shall be on written interrogatories which, with the several answers thereto, shall be signed by the persons so examined and filed by the clerk of the court awarding the debtor's discharge.

If any person so summoned shall refuse to attend without reasonable excuse or to be sworn, or affirmed, the court may commit such person to jail until he shall submit to be examined concerning what he knows relating to the insolvent's estate or effects.

Source R S 2 36-10

5:6-12. Approval of assignee's contract to sell real estate. Upon making any contract for the sale of the real estate of the assignor under the assignment for the benefit of creditors, the assignee shall forthwith present the same to the court on motion, notice of which shall be served on such creditors as the court shall direct, whereupon the court shall hear the parties interested and shall either declare such contract void or confirm the same.

Part VI.

RULES GOVERNING THE JUVENILE AND DOMESTIC RELATIONS COURT.

6:2-7(d). The adjustment committee heretofore created by any municipal youth guidance committee or council and any municipal juvenile adjustment committee hereafter appointed shall maintain summary records of each child brought to its attention. The summary record shall include data concerning the circumstances surrounding each referral of a child to the

committee, concerning his family, school, church, and neighborhood relationships, and concerning the methods used by the committee to improve the adjustment of the child. These records shall be confidential with the exception that they may be reviewed at any time by the judge of the juvenile and domestic relations court having jurisdiction, to make sure that no child properly referable to such court is denied access to the court. Each adjustment committee of any municipal youth guidance council and each municipal juvenile adjustment committee may also be called upon to provide reports of its operation by the municipal governing body and the juvenile and domestic relations court.

Note of Reporter. Source from the practice and procedure outlined in R S 9 22-8

6:2-7. Records. Rule 6 2-7 is supplemented by adding the following

e Destruction of records

The court is empowered to make suitable provision for the destruction of any of the records thereof provided that no case records shall be destroyed until a period of 10 years shall have elapsed following the date of final disposition of any offender.

Note of Reporter. This proposed rule takes the place of the practice and procedure under R S 9 18-18, as amended L 1946, c 77, p 269, §3. R S 9 18-18 is to be repealed.

Rule 6 2-10 is to be adopted as follows

6:2-10. Mental and physical examinations permitted. The court may cause any person coming under its jurisdiction to be examined by a physician, psychiatrist or psychologist, designated by the court, in order that the condition, special needs and personality of such person may be given due consideration in the disposition of the case.

Note of Reporter. This rule is substituted for and takes the place of the practice and procedure under R S 9 18-28. R S 9 18-28 is to be repealed.

6:5-2. Trial by jury. Rule 6 5-2 is amended by substituting therefor the following

a The court shall hear and determine all cases of children arising under the provisions of this subtitle without a jury.

b If an adult is charged with an offense for which he is entitled to a jury trial, and if he shall so demand, a jury shall be selected in accordance with the rules for the conduct of trials in the superior and county courts.

Note of Reporter. This proposed rule takes the place of the practice and procedure under R S 9 18-29 and modifies slightly the present Rule 6 5-2. R S 9 18-29 is to be repealed.

6:6-6. Detention. Rule 6 6-6 is amended by inserting the following new paragraphs after paragraph (b).

c A child between the ages of 16 and 18 years coming within the provisions of this subtitle shall not be placed in any prison, jail, lockup or police station unless there shall be no other safe and suitable place for his detention, and that it

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is necessary for his protection or the protection of the public, and unless when so placed in a jail, lockup or police station it shall be in a segregated section of such premises where the said child cannot have contact with any adult convicted of crime or under arrest

d Nothing in this section shall be construed as forbidding any peace officer from immediately taking into custody any child who is found violating any law or ordinance or whose conduct or surroundings are such as to endanger his welfare. In every case, the officer taking the child into custody shall proceed as specified in Rule 6 6-3

e When a child shall have been taken into custody, he may be transported to his home, or to the place of detention or other place designated by the court, in a radio patrol car, or other vehicle not specifically intended for the transportation of adults under arrest

Note of Reporter The proposed amendment to Rule 6 6-6 is substituted for, and takes the place of, the practice and procedure under R S 9 18-25 R S 9 18-25 is to be repealed

6:6-9. Material witnesses. If any child under the age of 18 years of age who may be designated a material witness is taken into custody, the release of such material witness and the conditions of such release pending the arraignment and trial of the person accused in the criminal court shall be determined at a hearing before the juvenile and domestic relations court upon notice by the court to the proper parties

Note of Reporter This proposed new rule complements proposed legislation 9A 18-12 giving the court jurisdiction of material witnesses

6:7-1. Hearing. Rule 6 7-1 is amended by adding a sentence reading as follows

All cases involving children shall be heard separate and apart from the trial of cases against adults

6:7-15. Community responsibility for juvenile delinquency. Rule 6 7-15 is amended to read as follows

a If on the determination of a criminal case before a judge of a court of general criminal jurisdiction or a judge of the juvenile and domestic relations court, it shall appear that the guilt of the defendant or delinquency of the child is attributable in whole or in part to the existence of deleterious, degrading or deteriorating conditions, practices or influences within the municipality wherein the convicted defendant or delinquent child resides, the judge, upon a determination of guilt or delinquency shall send a report as to such conditions, practices or influences to the governing body of the municipality in which the convicted defendant or delinquent child resides

b If in any municipality there shall exist a municipal youth guidance commission or council or other organization specifically devoted to the prevention of crime and juvenile delinquency, such commission or council or organization may

notify the judges of the court having jurisdiction of offenses and juvenile delinquency occurring in such municipality of its existence and it shall be the duty of such judges to send copies of all such reports to such commission or other organization.

Note of Reporter The proposed amendment to Rule 6 7-15 takes the place of and is substituted for the practice and procedure under R S 9 21-1 and R S 9 21-2 and is substituted for present Rule 6 7-15

Part VII.

RULES GOVERNING CIVIL PRACTICE IN THE COUNTY DISTRICT COURTS AND MUNICIPAL COURTS (INCLUDING RULES OF ADMINISTRATION OF COUNTY DISTRICT COURTS).

7:4-6(c). The officer serving a summons or other process shall, on his oath of office, indorse thereon a return of the time and manner of his execution thereof and sign his name thereto

Note of Reporter Return of process is properly a matter of rule and is covered by Rule 3 4-7. However, that rule in its second sentence provides that if service is made by any person other than a sheriff, under-sheriff or deputy, proof of service shall be by affidavit. This proposed rule does away with the necessity of affidavit

The same result could be obtained by amending the present Rule 3 4-7, second sentence, by stating "If service is made by any person other than a sheriff, under-sheriff, or deputy, and in the district court by a sergeant at arms or other officer, proof of service shall be by affidavit"

7:6-1(a). Transfer of landlord and tenant cases to superior court. Any summary action for the removal of a tenant commenced in a county district court, may, after the issuance of summons and affidavit, but prior to the original or adjourned date thereof, be transferred upon order of the judge of the superior court, to the superior court, there to be tried in accordance with law

All summary proceedings for the removal of tenants so transferred shall be tried by a jury unless the parties shall, in writing, waive such a trial

A judgment shall be entered upon the findings of a judge, or jury if there be a jury, and if the judgment be in favor of the landlord a writ shall issue to the sheriff of the county in which the premises are situated, commanding him to put the landlord in possession and to levy and make the costs out of the goods, chattels and lands of the person in possession, and if rendered for the defendant execution shall be had in like manner for his costs

The judgment of the superior court in such proceedings shall not be appealable except on the ground of lack of jurisdiction

7:6-3. Interrogatories; order of court. The provisions of Rule 3 33 shall be applicable to all actions in the district court other than those in the division of small claims and landlord and tenant in summary proceedings.

In actions in the division of small claims and in

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summary proceedings between landlord and tenant, interrogatories may not be obtained

Note of Reporter. It is the feeling of those of us who have worked on the revision that no interrogatories should be obtained in either the small claims division or in landlord and tenant summary proceedings.

7:6-4. How depositions may be taken. Depositions may be taken as provided by the rules of superior court, but leave to take depositions shall be upon order of the court

Applications for leave to take depositions may be denied in the discretion of the court

Note of Reporter We feel that the practice on depositions should be the same in all courts, but that depositions ought not be taken in the district court practice unless ordered by the court, otherwise unnecessary expense will ensue to litigants

7:6-5. Deposit into court. In an action, after summons issued and before judgment, the defendant may pay into court the amount he believes will fully satisfy plaintiff's demand, with the costs incurred by plaintiff up to the time of such payment, and a fee of 5% of his payment on an amount up to \$500 00 and 2% on any excess over \$500 00, for plaintiff's attorney, if any

The clerk shall notify the plaintiff or his attorney of such payment, by mail or by causing the notice to be delivered at his office or usual place of abode

7:6-6. Payment of money on deposit. Upon application by the plaintiff, without notice to the defendant, the amount paid into court by the defendant under Rule 7 6-5 shall be paid over to the plaintiff or his attorney by check signed by the clerk, upon order of the court

7:6-7. Election to proceed; payment of costs to defendant. If plaintiff after payment in accordance with Rule 7 6-6, elects to proceed with the trial of the cause and recovers nothing in excess of the amount deposited by the defendant, he shall pay to the defendant the costs incurred by him in the action after his payment into court, which costs may be collected as other costs are collected in the county district court

Note of Reporter These proposed rules are adopted from procedure set forth in superior court Rule 3 67 It is necessary to have special rules for the district court because under Rule 3 67 money paid must be deposited with the clerk of superior court

7:6-8. Deposit with court in lieu of bond. Whenever a bond with sureties may be required, the court in lieu thereof may by order accept a deposit of cash in such sum as it may fix

The clerk shall deposit the money so paid in a New Jersey bank or banks authorized to do business in this state and same may be drawn therefrom by check signed by the clerk upon order of the court

Note of Reporter Paragraph 1 of the proposed rule is in the exact language of Rule 3 67-2 Paragraph 2 adds a method of paying out money so deposited This is necessary because money deposited in accordance with Rule 3 67-2 is deposited with the clerk of the superior court

7:12A-1. Summary proceedings for collection of penalty. Any penalty imposed by any statute

heretofore or hereafter enacted, which may be collected or enforced by summary proceedings or in a summary manner may be collected and enforced in summary proceedings or in a summary manner with the procedure prescribed by this rule and the procedure in every county district court, every county court in any county, and any other court upon which, or any magistrate or other judicial officer upon whom, jurisdiction is conferred by the statute imposing the penalty, shall be in accordance with this rule.

Source C 2 72A-1 and C 2 72A-2

7:12A-2. Complaint; verification. A complaint shall be made in writing, shall be duly verified, shall specify the person who was alleged to have violated a provision of any statute, for the violation of which is imposed a penalty to be enforced in summary proceedings or in a summary manner, and shall specify the statute, and identify the provision, violated, and shall specify the time, place and nature of such violation. Where the proceeding is instituted by an official body or person, the verification of the complaint may be made on information and belief by any person authorized by such body or person to act on its or his behalf.

Source C 2 72A-3

7:12A-3. Process; issuance. Upon the filing of a complaint process shall issue, which process shall specify the provisions of the statute which is alleged to have been violated by the defendant

Source C 2 72A-5

7:12A-4. Process, when returnable; warrant in lieu of summons. In all cases such process may be in the nature of a summons, which shall be returnable in not less than 5, nor more than 15 days, or if so provided in the statute imposing the penalty, a warrant may issue, in lieu of a summons, in which case such warrant may issue without any order of the court first being obtained and shall be returnable forthwith The clerk of any district court or county court may sign and seal any process, except a warrant

Source C 2 72A-6

7:12A-5. Service and execution of process Any process issued under this statute may be served and executed by any officer authorized to serve and execute process in the court in which the proceedings are brought, or by any other person designated for that purpose in the statute imposing the penalty

Source C 2 72A-7

7:12A-6. Arrest without warrant; complaint filed. If the statute imposing the penalty authorizes arrest without a warrant for a violation, done within the view of an enforcing officer, for which a penalty is imposed enforceable in summary proceedings or in a summary manner, such officer shall upon arrest for such a violation without a warrant, carry the defendant before a court having jurisdiction of proceedings to enforce such penalty, and shall then forthwith file a complaint

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In such case no process for the defendant's appearance shall issue, but upon the filing of the complaint the cause shall proceed as though process had issued and had been there and then duly served and returned

Source C 2 72A-8

7:12A-7. Summary hearing; judgment without filing of pleadings. On the return of the process or at any time to which the trial shall be adjourned, the court, in which such proceedings were instituted, shall proceed summarily to hear the testimony and to determine and give judgment in the matter without the filing of any pleadings, except such complaint, by the plaintiff, whether for the recovery of a money penalty or costs or both, or otherwise, or by the defendant

Source C 2 72A-9

7:12A-8. Hearing without jury. Unless otherwise provided in the statute imposing the penalty, such hearing shall be without a jury.

Source C 2 72A-10

7:12A-9. Adjournment of hearing; defendant detained; bond for release during adjournment. Any hearing may, in the discretion of the court in which the proceedings were instituted, be adjourned from time to time, but on adjournment in every case, except where the first process was a summons, such court shall detain the defendant in safe custody, unless he shall make deposit in cash, in the amount of the penalty claimed and costs, or enter into a bond, with at least 1 sufficient surety, in double the amount of the penalty claimed and costs, or if there be no money penalty, then in such sum, not exceeding \$500 00 as shall be fixed by the court, conditioned for the appearance of the defendant on the day to which the hearing is adjourned, and thence from day to day until judgment is rendered and further conditioned, unless the court shall otherwise order, to abide by the judgment of the court. Where the plaintiff is an official body, the bond shall run to the body and, if forfeited, may be prosecuted by the body

Source C 2 72A-11

7:12A-10. Judgment, form of. The judgment of conviction in prosecutions instituted and carried on in accordance with the procedure prescribed in Rule 7 12A, shall be signed by the judge of the court in which, or the judicial officer by whom, the judgment is rendered, and shall be in substantially the form attached to these rules

Source C 2 72A-12

7:12A-11. Commitment of defendant failing to pay judgment. If the statute imposing the penalty provides for commitment of the defendant, upon the failure of the defendant to pay forthwith the amount of any money judgment rendered against him, the court in which such judgment is rendered shall in any such case cause the defendant to be committed to any institution and for any number of days, which shall be au-

thorized or directed by such statute, unless the judgment shall be sooner paid

Source C 2 72A-13

7:12A-12. Form of commitment The form of commitment shall be added beneath the signature to the judgment and shall also be signed by the judge or other judicial officer, and shall be substantially in the form attached to these rules

Source C 2 72A-14

7:12A-13. Judgment and commitment signed in duplicate. In any case in which the defendant is committed to jail, the judgment and commitment shall be signed in duplicate and 1 of the duplicates shall serve the purpose of a warrant of commitment

Source C 2 72A-15

7:12A-14. Money judgment; execution, property and persons subject to. If a money judgment is rendered against a defendant, execution may issue,

1 Against the goods and chattels of such defendant in all cases, and also,

2 Against the lands of such defendant if such judgment is rendered in a county court, and also,

3 Against the body of such defendant if he is an individual and if the court in which the judgment is rendered shall, by special order, so direct and shall designate in said order the maximum number of days during which the defendant may be detained in custody under such body execution

Source C 2 72A-16

7:12A-15. Form of execution. Execution shall be substantially in the form attached to these rules

Source C 2 72A-17

7:12A-16. Costs. The costs recoverable in any proceeding instituted under Rule 7 12A shall be such as are prescribed in the statute imposing the penalty, and shall be recovered by the plaintiff if the judgment is rendered against the defendant

Source C 2 72A-18

7:12A-17. Clerk of court; authority as to process. The clerk of the court in which the proceedings are instituted may sign, seal and issue any process required to be issued under Rule 7 12A, except a warrant of commitment

Source C 2 72A-20

Part VIII.

RULES GOVERNING PRACTICE IN THE LOCAL CRIMINAL COURTS.

8:2-1. Amend subsection (d) and add a new subsection (f) as follows

8:2-1. Court sessions.

* * * * *

d Separate sessions of a court, or parts of a court where it sits in parts, may be designated as "traffic" or "family" sessions or parts, for

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the hearing and determination of such separate matters, or as a "night" session or part

* * * * *

f In the absence of the magistrate or acting magistrate, the clerk of the court shall adjourn the court to a day certain, and the fact of such adjournment shall be noted on the docket for each case scheduled

8:3-4. Amend Rule 8 3-4, to read as follows

8:3-4. Adjournments.

Upon the return day of a warrant or summons the magistrate, in his discretion, may adjourn the hearing for a period not to exceed 10 days. He may, for good cause shown, grant a further adjournment when, in his opinion, postponement of the hearing is reasonably necessary. Adjournments, and the reasons therefor, shall be entered on the docket. Where the proceeding is upon warrant and the person charged has been admitted to bail, the magistrate may continue the bail to the adjourned date of the hearing, but if the person charged has not theretofore been admitted to bail, the magistrate may require him to enter into a recognizance for his appearance upon the adjourned date.

8:7-5. Amend Rule 8 7-5 as follows

a Official record. Any official record or any entry therein, or the lack of such a record or entry, may be proved in the same manner as in civil actions.

b Exception, proviso or condition of statutes and ordinances. It shall not be necessary for any complaint, warrant or summons to specify or negative any exception, exemption, proviso, excuse, condition or qualification in the statute or ordinance on which any case shall be predicated, nor shall it be necessary for the prosecutor or complainant to prove the same, but the defendant may prove the affirmative thereof in his own defense if he would have advantage of it.

Source R S 2 220-39

8:7-13. Discontinuance of trial; report to county prosecutor. If, on the trial of a complaint for an offense of which the court has jurisdiction, it shall appear to the magistrate that there is probable cause to believe that an offense of which the court does not have jurisdiction has been committed and that the defendant committed it, the magistrate shall forthwith discontinue the trial and hold the defendant to bail in the same manner as if a complaint had originally been taken against the defendant for the offense which such court lacked jurisdiction to try. An entry shall be made on the docket as to such discontinuance and the reasons therefor. Thereupon the magistrate shall transmit, forthwith, to the county prosecutor all the papers in the proceeding, and any bail taken by him shall be transmitted to the county clerk.

8:12-5. Records. The supervising clerk or chief clerk of the court, where there is one, or the

clerk of the court, or the magistrate where there is no clerk, shall keep such records and make such reports as the administrative director of the courts may prescribe. All papers in every cause shall be filed and remain with the court trying the same. The docket and records kept by the supervising clerk, chief clerk, clerk or magistrate, as the case may be, shall be open to the inspection of any person legally entitled to examine them.

8:13-3. Amend Rule 8 13-3 by designating the present text as (a) and adding subsections (b) and (c) as follows

8:13-3. Clerk and other personnel.

* * * * *

b Clerks and deputy clerks shall attend the sessions of their respective courts and the examinations, trials and proceedings therein. They, and all persons holding any office, position or employment in the court, shall perform such other duties and services appertaining to the court and the business thereof as these rules or the magistrate may prescribe.

c A magistrate may, in the temporary absence of the clerk of court and the deputy clerk, designate an acting clerk. Any such designation shall be made in writing and shall be filed in the court, and any such person so designated, while acting temporarily, shall have all the powers and duties of the clerk of the court.

General Rules of Administration

A:20. Court reporter.

a Duties at trial. Subject to the rules of the supreme court, the duties of a reporter shall be to attend at each session of the court or courts to which he shall have been assigned, and at every other proceeding that may be designated by rule or order of the supreme court, or by a judge of the court to which he shall have been assigned, and shall record verbatim, under the direction of the judge of the court, by any system of shorthand or stenotype such proceedings as a judge of the court may direct or as may be required by rule or order of the court. It shall not be necessary, however, to record the argument of counsel upon any trial unless directed to do so by the court.

Source C 2 16-24 6, L 1948, c 376, p 1548, §6

b Official's certificate of authenticity. The reporter shall attach his official certificate of authenticity to the original shorthand or other original records so taken and file them with the clerk of the court, who shall preserve them in the public records of the court for 5 years.

Source C 2 16-24 7, L 1948, c 376, p 1548, §7

c Transcripts for use other than on an appeal. If at any time a party to a proceeding requests a transcript of the testimony, or of any part or parts thereof, for his own individual use, and deposits a sum sufficient to pay the lawful fees therefor (that is to say, the fees provided for 1 original and 1 first carbon copy), or the

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transcript is requested by a judge of the court, the reporter or his successor shall promptly transcribe an original and 1 first carbon copy thereof. He shall then attach his official certificate to both and deliver the carbon copy to the party or judge making the request and file the original with the clerk of the trial court where it shall remain for the purpose of being incorporated in the record in case an appeal is thereafter taken. In the event that the party requesting the transcript thereafter appeals, he shall at the time of filing the notice of appeal also file in the office of the clerk of the trial court the carbon copy of the testimony, or part or parts thereof, transcribed for him as aforesaid, and forthwith notify the attorney of every other party of said filing. Such carbon copy or copies shall then be available for the use of the attorneys of the appellant and of the respondent for the purposes and subject to the terms and conditions specified in paragraph (c) of this rule. A party appearing in his own behalf shall be accorded the same privileges. In the event of an appeal, if the transcript is not a complete transcription of the original shorthand notes or other original records, it may be completed for the purpose of perfecting the record on appeal as provided in paragraph (c) of this rule.

d Authenticity of transcript. The certified transcript of the testimony and proceedings in any matter shall be deemed prima facie a correct statement of such testimony and proceedings, and no transcripts shall be considered as official except those made from the records taken by the reporter appointed as provided by section 2A 16-18 of the statutes.

e Original notes of reporter. The original notes or other original records of the reporter, and any official transcript thereof, filed with the clerk as hereinbefore provided, shall be open to inspection in the office of the clerk as provided by law with respect to books containing the docket or minute of judgments thereof.

Source C 2 16-24 8, L 1948, c 376, p 1548, §8, as am L 1949, c 131, p 502, §1

A:23. Administrative director of the courts.

a Qualifications of administrative director, seal of office. The administrative director of the courts shall be a bona fide resident of the state of New Jersey and shall have been such for not less than 3 years immediately prior to his appointment. He shall cause a seal of office to be made in such design as the chief justice shall approve, and judicial notice shall be taken of such seal.

b Functions of director. The director shall, subject to the direction of the chief justice, perform the following functions:

- 1 Examine the administrative methods, systems and activities of the judges, clerks, stenographic reporters and employees of the courts and their offices and make recommendations to the chief justice with respect thereto.
- 2 Examine the state of the dockets of the

courts, secure information as to their needs for assistance, if any, prepare statistical data and reports of the business of the courts and advise the chief justice to the end that proper action may be taken.

3 Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the courts and make recommendations with respect thereto.

4 File requests for appropriations or permission to spend, as request officer for the supreme and superior courts and, as approval officer, approve and sign all encumbrance requests and statements of indebtedness on behalf of said courts.

5 Make necessary arrangements for accommodations for the use of the supreme and superior courts and the clerks thereof and for the purchase, exchange, transfer and distribution of equipment and supplies for said courts and clerks.

6 Investigate and collect statistical data and make reports relating to the expenditures of public moneys, state, county and municipal, for the maintenance of the courts and the offices connected therewith.

7 Examine, from time to time, the operation of the courts, investigate complaints with respect thereto, and formulate and submit to the chief justice recommendations for the improvement thereof.

8 Act as secretary of the judicial conference held pursuant to supreme court rules.

9 Attend to such other matters as may be assigned by the chief justice.

c Information and statistical data. All judges, clerks, and stenographic reporters and their assistants and employees, shall comply with any and all requests made by the director for information and statistical data bearing on the state of the dockets of the courts and such other information as may reflect the business transacted by them and the expenditure of public moneys for the support of the courts and the officers connected therewith. All law enforcement officers shall comply with any and all requests made by the director for information and statistical data bearing on the operation of their offices.

d Annual report. The director shall submit annually as of June 30th to the chief justice, a report of the activities of the administrative office of the courts together with his recommendations. L 1948, c 354, p 1421, §5.

Source L 1948, c 354—a portion of section 1 and all of sections 3, 4 and 5. The remainder of the chapter will be found in 2A 16-8 and 2A 16-9.

FORMS—PART III.

FORM 14A.—LETTERS.

a. Letters testamentary; superior court.

I, _____, clerk of the superior court of New Jersey, do certify the annexed to be a true copy of the last will and testament of

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deceased, late of the county of . . . , state of . . . , admitted to probate by the superior court of New Jersey, and that . . . , the executors therein named, are duly authorized to take upon themselves the administration of the estate of the testator, agreeably to said will

Witness my hand and the seal of the superior court at Trenton this . . . day of . . .

. . . Clerk

b. Letters testamentary; surrogate's court.

I, . . . , surrogate of the county of . . . , state of . . . , do certify the annexed to be a true copy of the last will and testament of . . . , deceased, late of the county of . . . , state of . . . , admitted to probate by me, and that . . . , the executors therein named, are duly authorized to take upon themselves the administration of the estate of the testator, agreeably to said will

Witness my hand and seal of office this . . . day of . . .

. . . Clerk

c. Letters of administration with the will annexed; surrogate's court.

To all to whom these presents shall come, greeting

Whereas, . . . , late of the county of . . . , in the state of . . . , departed this life, having made and executed a last will and testament, which has been duly proved, according to law, before the surrogate of the county of . . . ; and whereas (the said testator failed to appoint any executor thereof), (or the executor named therein has renounced the office given to him by said will, or as the case may be), therefore,

I, . . . , surrogate of the county of . . . , do hereby appoint . . . , administrator of all and singular the goods, chattels and credits of the deceased, who is duly authorized to administer the same agreeably to said will

In witness whereof, I have hereunto set my hand and seal of office, etc

. . .

d. Letters of administration; surrogate's court.

I, . . . , surrogate of the county of . . . , do certify that on the . . . day of . . . , administration of the goods and chattels, rights and credits, which were of . . . , late of the county of . . . , who died intestate, was granted by me to . . . , of . . . , who is duly authorized to administer the same agreeably to law Witness my hand and seal of office, etc

. . .

e. Letters of trusteeship of surrogate's court.

To all to whom these presents shall come, greeting

Whereas, . . . , late of the county of . . . , in the state of . . . , in and by his last will and testament, duly proved before the surrogate of the county of . . . , did

appoint . . . as trustee, and whereas the said . . . has accepted the duties of trustee as therein provided, therefore

I, . . . , surrogate of the county of . . . , do hereby certify that the said . . . is duly authorized to execute the said trust according to law and the terms of the said last will and testament

In witness whereof, I have hereunto set my hand and seal of office, et cetera

. . . Surrogate

f. Letters of testamentary guardianship; surrogate's court.

To all to whom these presents shall come, greeting

Whereas, . . . , late of the county of . . . , in the state of . . . , in and by his last will and testament, duly proved before the surrogate of the county of . . . , did appoint . . . to be guardian of the person and property of . . . , an infant, under the age of 21 years, and whereas, the said . . . has accepted the said appointment and entered into bond according to law; therefore

I, . . . , surrogate of the county of . . . , do hereby certify that the said . . . is duly authorized to execute the said trust according to law and the terms of the said last will and testament

In witness whereof, I have hereunto set my hand and seal of office, etc

. . . Surrogate

g. Letters of guardianship of orphan; county court.

I, . . . , surrogate of the county of . . . , do certify that on the . . . day of . . . , the . . . county court appointed . . . of . . . , as guardian of the person and property of . . . , an orphan . . . 14 years of age

Witness my hand and seal of office, etc.

. . .

h. Letters of guardianship of orphan; surrogate.

I, . . . , surrogate of the county of . . . , do hereby certify that, on the . . . day of . . . , I appointed . . . of . . . , as guardian of the person and property of . . . , an orphan . . . 14 years of age

Witness my hand and seal, etc

. . .

Source The letters testamentary are taken from R S 3 7-1 The letters of administration with the will annexed are taken from R S 3 7-4 The letters of administration are taken from R S 3 7-7 The letters of trusteeship are taken from C 3 7-13 5, L 1941, c 152, §2 The letters of testamentary guardianship are taken from R S 3 7-21 The letters of guardianship of orphan, county court are taken from R S 3 7-32 The letters of guardianship of orphan, surrogate are taken from R S 3 7-32

Note of Reporter The provision in the statutory form of letters testamentary in R S 3 7-1, to the effect that "the executors . . . proved the same before me", is drawn from the English practice In that

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practice, where the will is probated in common form, the executors (not the witnesses) prove the will. That provision has therefore been dropped.

FORM 35A.—SATISFACTION OF JUDGMENT.

a. Warrant.

To the clerk of the court of

Whereas, I, A. B., heretofore, to wit, in the term of, obtained final judgment in the court of, in the state of New Jersey, against C. D. for debt, and costs (or for damages and costs, or for costs, as the case may be), as by the record thereof may appear, and whereas, I have received satisfaction for the same, these are therefore to desire and authorize you to enter an acknowledgment of satisfaction upon the record of the said judgment, and for your so doing this shall be your sufficient warrant and discharge in that behalf.

In witness whereof, I have hereunto set my hand and affixed my seal, the day of, 19.....

A. B. (Seal)

Signed, sealed and delivered in the presence of

b. Clerk's entry of satisfaction.

I, E. F., clerk of the court of, by virtue of a special warrant of attorney (duly acknowledged or proved, as the case may be) from A. D. in the foregoing record named, and to me directed, do hereby acknowledge that said A. D. is satisfied of the debt and costs (or damages and costs, or costs, as the case may be).

Dated this day of 19.....
E. F., Clerk.

c. Clerk's entry of satisfaction.

I, E. F., clerk of the court of, by virtue of an order of said court in the foregoing record named dated, do hereby acknowledge that the said defendant has satisfied the said damages and costs by payment to me of the sum of \$ in satisfaction thereof.

Dated this day of 19.....
E. F., Clerk.

Part VII.

FORM 13.—JUDGMENT.

State of New Jersey,
County of

ss
Be it remembered, that on the day of A. D. 19....., at (name of municipality) in said county, in a summary proceeding, at the suit of, upon complaint made by, in which proceeding the witnesses who testified for the plaintiff were (name them) and the witnesses who testified for the defendant were (name them) it was considered, determined and adjudged by

(name of court, or other judicial officer),
that the defendant (name)
was convicted of violating section,
(describe statute violated), and the acts amendatory thereof and supplemental thereto (if more than 1 violation is described in the section violated, here insert a description of the actual violation in the words of the statute, thus, "in that he did")

(If the evidence discloses a former conviction by reason whereof the defendant is subjected to a greater penalty, insert the following), "and that the defendant had previously been convicted of violations of the same (statute or section), and by reason thereof was subject to a penalty as a second subsequent offender".

Wherefore, the said (name of court, or other judicial officer) doth hereby give judgment that,

(If money penalty alone is imposed insert the following), "the plaintiff recover of the defendant (amount) penalty, and (amount) costs of this proceeding"

(If a term of imprisonment alone is imposed, insert the following) "the defendant be imprisoned in the (name institution) to which commitment is made) for the term of days and pay (amount) costs of this proceeding"

(If both a money penalty and a term of imprisonment are imposed, insert the following) "the plaintiff recover of the defendant penalty and (amount) costs of this proceeding and in addition the defendant be imprisoned in the (name institution) to which commitment is made) for the term of days".

(Signature of judge or other judicial officer.)
L. 1948, c. 253, p. 1118, §12

FORM 14.—COMMITMENT.

(If commitment is for failure to pay forthwith a money judgment, insert the following) "and the said defendant (name) having failed to pay forthwith the amount of the judgment above mentioned, it is hereby ordered that the said (name defendant)

be and hereby is committed to (name of institution) for a period of days, unless the amount of said judgment is sooner paid".

(If commitment is for a term of imprisonment and not for failure to pay a money penalty, insert the following) "it is hereby ordered that the said (name defendant) be and hereby is committed to (name of institution) for a period of days".

(If commitment is for a term of imprisonment and also for failure to pay a money judgment, insert the following) "it is hereby ordered that the said (name of defendant)

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be and hereby is committed to
(name of institution) for a period of
days, and the said defendant
(name) having failed to pay the amount
of the money judgment above mentioned, it is
hereby further ordered that the said
(name defendant) be and hereby is
committed to (name of institution)
for an additional period of days, unless
the amount of said judgment is sooner paid"
L 1948, c. 253, p 1120, §14

FORM 15.—EXECUTION.

County. ss—The state of New Jersey
to any (title of office directed
to serve process)
Seal of court or
judicial officer
Greeting
You are hereby commanded to levy and make
of the goods and chattels of (name of de-
fendant) the sum of dollars, penalty,
and dollars, costs, which (name of
plaintiff) by a judgment of (name of court or
other judicial officer) rendered on the day
of A D 19 , recovered against the said
(name of defendant) and also the costs
thereof

(If execution is issued in a county court, insert
the following) "and for want of sufficient goods
and chattels whereon to levy and make the same,
then we further command you that you cause

the whole or the residue, as the case may re-
quire, of said penalty and costs to be made of
the lands, tenements, hereditaments and real
estate whereof the said defendant (name de-
fendant) was seized on the day of
19 , or at any time afterwards in whose hands
soever the same may be", and forthwith
pay the same to the said (name of plaintiff)
or in absence, into said court
(If body execution be awarded, insert the fol-
lowing) "and for want of sufficient property as
aforesaid whereon to levy and make the same,
to take the body of said (name of defendant)
and convey to the common jail of the
county aforesaid and deliver to the
keeper thereof, who is hereby commanded to
receive and keep in safe custody until the
said penalty and costs be fully paid, or in default
thereof until the expiration of days from
the delivery of the body of said (name of
defendant) to said keeper, or until prior thereto
be thence delivered by due course of
law", and due and legal return make of
the proceedings had on this execution
Witness (name of judge or judicial officer)
judge of the said (title of court) court, this
day of A D 19 , at

(Signature and title of clerk
or court or judicial officer)

L 1948, c 253, p 1122, §17, as amended L 1948,
c. 361, p 1452, §2

Table Showing Disposition of Statutes Contained in Title 3 of the Revised Statutes

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
Chapter 1. GENERAL JURISDICTION, POWERS AND DUTIES.					
RS 3 1-1		This statute which, if adopted, would provide that the superior court has authority to probate wills and grant letters of administration and guardianship is unnecessary in view of the plenary original jurisdiction given to the court by the constitution over "all causes"	RS 3 2-20		New Rule 3 88-10
			3 2-21		New Rule 3.92-1
			3 2-22		3A 2-22
			3 2-23		See proposed additional legislation covering the provisions of this statute and other matters
			3 2-24		3A 2-24
			C 3 2-24 1		
			(L 1944, c 21, §1).		3A 2-25
			C 3 2-24 2		
			(L 1944, c 21, §2)..		3A 2-27
			C 3 2-24 3		
			(L 1944, c. 21, §3)..		3A 2-27
3 1-2		3A.1-1	C 3.2-24 4		
3 1-3		2A.7-9	(L 1944, c. 21, §4)..		Unnecessary
3 1-4		2A.7-23	C 3.2-24 5		
3 1-5		2A.7-23	(L 1944, c. 21, §5)...		Effective date of act
Chapter 2. WILLS.			RS 3.2-25		New Rule 3 88-3 and new Rule 5 4-2
3 2-1		3A.2-1	C. 3.2-25 1		
3 2-2		3A.2-2	(L 1945, c 210, §1)...		3A.2-26
3 2-3, as am			C. 3.2-25 2		
L 1939, c 139, §1		See proposed additional legislation 3A.2-3	(L 1944, c 109, §2)..		3A 2-27
3 2-4		3A.2-4	C 3 2-25 3		
3 2-5		3A.2-5	(L 1945, c 109, §3)		3A.2-27
3 2-6		See proposed additional legislation for repeal of provisions as to nuncupative wills	C 3.2-25 4		
			(L 1944, c 109, §4)..		Unnecessary
			C 3.2-25 5		
			(L 1948, c 122, §1)...		New Rules 5.4-2 and 3:88-3
3 2-7		See proposed additional legislation as to proposed statutes respecting soldiers' wills	C 3 2-25 6		
			(L 1948, c 122, §2)		22 2-37 as proposed to be amended
3.2-8		3A.2-8	C 3 2-25 7		
3.2-9		3A.2-9	(L 1948, c 122, §3).		Unnecessary
3 2-10		See proposed additional legislation for repeal of provisions as to nuncupative wills	RS 3 2-26 and 3 2-27.		See proposed additional legislation for repeal of provisions as to nuncupative wills
3.2-11		See proposed additional legislation rendering probate judgment conclusive as to real title after 1 year	RS 3.2-28		3A 2-28 and new Rules 5 3-8 and 3 99-4
		3A 2-30	3.2-29		3A 2-29
3 2-12		3A.2-45	3.2-30		Unnecessary
3.2-13, as am			3.2-31 to 3.2-36		See proposed additional legislation for repealing of these statutes
L 1939, c 139, §2...		See proposed additional legislation for the amendment of this section	3 2-37		3A 2-37 and new Rules 3 88-8 and 5 4-1
3.2-14		3A 2-14	3.2-38		3A.2-37 and new Rules 3 88-8 and 5 4-1
3.2-15		3A 2-15	3.2-39		New Rules 3.88-8 and 5.4-1
3.2-16		3A 2-16	3 2-40		Unnecessary
3 2-17		See proposed legislation 3A.2-17	3 2-41		3A.2-41 and new Rule 3.88-9
3 2-18		3A.2-18	3 2-42		New Rule 3.88-9
3 2-19		3A 2-20	3.2-43		Rule 3:79-3 covers the matter adequately
C 3 2-19 1					
(L. 1947, c. 380, §1)		3A.2-19			

Title 3 ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
3:2-44		New Rule 3:88-3 and 3A.2-38			the deceased residuary legatee, or if there is no effectual residuary gift, then the next of kin R S 3:7-2 is utterly unjustifi- able In fact, until the case of In re Herman, 100 N J Eq 277 (Err & App 1926), some surrogates seem to have disregarded the statute There is no reason why, as provided by this statute, persons whom the testator has dis- inherited should be given the right to administer his estate With the abolition of the statute, the common law would apply in all cases, and as above stated, the person beneficially en- titled to the residue of the estate would in all cases be entitled to administra- tion with the will annexed
3 2-45.		Saved from repeal 3A.2-43			
C 3 2-45.1					
(L 1942, c 355, §1)		3A.2-41			
R S 3 2-46.		New Rule 3.88-4			
3 2-47.		New Rule 3.88-4			
3 2-48		New Rule 3 88-4			
3:2-49		Blank			
3:2-50		Blank			
3 2-51		Taken over verbatim in Rule 3:54-7			
3:2-52		Obsolete			
Chapter 3. DESCENT OF REAL ESTATE.					
See proposed additional legislation, 3A 3 supplant- ing Chapters 3 and 5					
Chapter 4. PROOF OF DESCENT OF REAL ESTATE.					
To be repealed.					
Chapter 5. DISTRIBUTION OF PERSONAL PROPERTY.					
See proposed additional legislation, 3A.3 supplant- ing Chapters 3 and 5					
Chapter 6. DEFINITIONS AND CONSTRUCTION IN GENERAL.					
R S 3 6-1		3A 6-1			
3 6-2		3A.6-2			
Chapter 7. APPOINTMENT AND GENERAL POWERS OF FIDUCIARIES.					
R S 3.7-1.		See proposed new form to be added to the rules, form 14A			
3:7-2		Under this statute in 2 cases, namely, where an executor renounces the executorship or where he neglects for 40 days to prove the will, the spouse or next of kin is entitled to administration with the will annexed In all other cases the situation is dealt with by the common law. Thus where there is no executor named in the will or the executor prede- ceases the testator, ad- ministration with the will annexed must be given to the person beneficially en- titled to the residue of the testator's estate—that is, the residuary legatee, or the guardian of an in- fant or incompetent, resi- duary legatee or the personal representative of			
			3.7-3		3A.7-1
			C 3.7-3.1		Proposed new Rule 3.88-10
			R S 3.7-4		See proposed new form 14A
			3.7-5		3A 7-2
			C 3 7-5.1		3A 7-3
			R S 3.7-6		3A.7-4
			3.7-7		See proposed new form 14A
			3.7-8 (as am L 1950, c 125, §1) . . .		3A.7-5
			C 3.7-8.1 (L 1941, c 382, §1) . .		3A.7-6 Proposed addi- tional legislation
			3.7-8.2 (L 1941, c 382, §2) . .		3A 7-7
			R S 3 7-9		3A.7-8
			3 7-10		3A 7-9
			3:7-11		3A:7-10
			3 7-11.1		3A 7-11
			3.7-12		3A:7-12
			3:7-13		3A.7-13
			C 3:7-13.1 to 3:7-13.3 .		3A.7-15
			3:7-13.4		3A 7-16 The last portion of this statute, requiring testamentary trustees to appoint the clerk of the superior court or the sur- rogate their attorneys to receive process, is covered by 3 13-12, as amended by L 1941, c 138, §1 As to the acceptance of trustee- ship, see Rule 3.89-1
			3 7-13.5, as am L 1941, c 152, §2) . .		See form 14A
			R S 3 7-14		3A 7-17
			3 7-15		3A 7-18
			3 7-16		3A 7-19
			3 7-17		Repeal Rule 3 90-5 covers this

DISTRIBUTION TABLE

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
3 7-18, as am			3 7-73 .. .	3A 7-73	
L 1945, c 119, §1 . . .	3A 7-20		3 7-74 . . .	3A 7-74	
3 7-19	3A 7-21		3 7-75 . . .	3A 7-75	
3 7-20	3A 7-22		3 7-76 . . .	3A 7-76	
3 7-21	See proposed new rule to be added to the rules, form 14A		C 3 7-76 1, as am		
			L 1944, c 129, §2	3A 7-77	
3 7-22	3A 7-23		3 7-76 2, 3 7-76 3		
3 7-23	3A 7-24		as am L 1944, c 129,		
C 3 7-23 1	3A 7-26		§3 and §4 . . .	This matter is covered by Rule 3 79	
R S 3 7-24	See new Rule 3 90-2 3A 7-26 covers the re- mainder of this section		3 7-76 4, as am		
			L 1944, c 129, §5	3A 7-78	
3 7-25	3A 7-27		3 7-76 5, as am		
3 7-26	3A 7-28		L 1944, c 129, §6	3A 7-79	
3 7-27	See proposed new Rule 3 90-2		3 7-76 6, as am		
			L 1944, c 129, §7	3A 7-80	
3 7-28	3A 7-29		3 7-76 7, as am		
3 7-29	3A 7-30 and 3A 7-31		L 1944, c 129, §8	3A 7-81	
3 7-30	3A 7-32		3 7-76 8, as am		
3 7-31	3A 7-33		L 1944, c 129, §9	3A 7-82	
3 7-32	See proposed new forms 14A (G and H)		3 7-76 9	3A 7-83	
	To be repealed		3 7-76 10, as am		
3 7-33	3A 7-37		L 1944, c 129, §10	3A 7-84	
3 7-34	3A 7-34		3 7-76 11, as am		
C 3 7-34 1	Effective date		L 1944, c 129, §11	3A 7-85	
3 7-34 2	To be repealed		R S 3 7-77	3A 7-86	
R S 3 7-35	To be repealed				
3 7-36	To be repealed				
3 7-37	To be repealed				
3 7-38	To be repealed				
3 7-39	To be repealed				
3 7-40	To be repealed				
3 7-41	3A 7-35, 3A 7-38				
3 7-42	3A 7-36				
3 7-43	3A 7-40				
3 7-44	Unnecessary This is cov- ered by 3A 8-1				
3 7-45	3A 7-41				
3 7-46	3A 7-42				
3 7-47	To be repealed				
3 7-48	Blank				
3 7-49	3A 7-39				
3 7-49 1	This section is unneces- sary				
3 7-49 2	To be repealed				
3 7-49 3	This section is unneces- sary				
3 7-49 4	To be repealed				
3 7-50, 3 7-51					
3 7-52	3A 7-43 and proposed new rule 3 91-7				
3 7-53 to 3 7-59	Supplanted by rule 3 91-6A				
3 7-60	In view of R S 3 7-61, this statute is now obsolete and unnecessary				
3 7-61	3A 7-61				
3 7-62	3A 7-62				
3 7-63	3A 7-63				
3 7-64	3A 7-64				
3 7-65	3A 7-65				
3 7-66	See 3A 7-65				
3 7-67	3A 7-67				
3 7-68	3A 7-68				
3 7-69	3A 7-69				
3 7-70	3A 7-70				
3 7-71	Blank				
3 7-72	3A 7-72				

Chapter 8. BONDS AND SURETIES.

R S 3 8-1, as am		
L 1948, c 359, §1	3A 8-1	
3 8-2, as am		
L 1948, c 359, §2	3A 8-2	
3 8-3	3A 8-3	
3 8-4, as am		
L 1948, c 359, §3	3A 8-4	
3 8-5	3A 8-5	
3 8-6	3A 8-6	
3 8-7	3A 8-7	
3 8-8	3A 8-8	
3 8-9	3A 8-9	
3 8-10	Repealed Covered by 3A 12-4, and the remedies provided by 3A 7-74 to 3A 7-76, including arrest in contempt proceedings, are more practicable and satisfactory than a capias action	
3 8-11, as am		
L 1945, c 113, §1	3A 8-11	
3 8-12, as am		
L 1945, c 113, §2	3A 8-12	
3 8-13	3A 8-13	
3 8-14	3A 8-14	
3 8-15, as am		
L 1945, c 113, §3	3A 8-15	
3 8-16	3A 8-16	
3 8-17	3A 8-17	
3 8-18	3A 8-18	
3 8-19	3A 8-19	
C 3 8-19 1		
(L 1944, c 181, §1) . . .	3A 8-20	
3 8-19 2		
(L 1944, c 181, §2)	3A 8-21	
R S 3 8-20	3A 8-22 et seq	
3 8-21	3A 8-22 et seq	
3 8-22	3A 8-22 et seq	

Title 3. ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS

All the statutes listed below
are to be repealed

Comment or proposed
new citation

All the statutes listed below
are to be repealed

Comment or proposed
new citation

3:8-23.....3A:8-22 et seq.
3:8-24.....3A:8-22 et seq.
3:8-25.....3A:8-22 et seq.
3:8-26.....3A:8-22 et seq.
3:8-27.....3A:8-22 et seq.

Chapter 9. INVENTORIES.

R S 3:9-1 3A:9-1
3:9-2.....3A:9-2
3:9-3.....Repealed Covered by
3A:9-2. The application by
an interested person to
compel an inventory has
been stricken as proced-
ural See proposed new
Rules 3 94-4 and 5 3-6
3:9-4.....3A:9-4
3:9-5.....3A:9-5
3:9-6.....3A:9-6
3:9-7.....3A:9-7
3:9-8.....3A:9-8
3:9-9.....3A:9-9
3:9-10.....Repealed. Obsolete
3:9-11.....Repealed. Where a fiduci-
ary fails to file an account
as ordered by the court, he
may be removed under
3A:12-4

Chapter 10. ACCOUNTING.

R.S. 3:10-1 to 3:10-3.Repeal as unnecessary in
view of the change made in
R S 3:10-5
3:10-4.....3A:10-4
3:10-5.....3A:10-5
3:10-6.....3A:10-6
3:10-7.....Repeal This matter is suf-
ficiently covered by
3A:10-5
3:10-8.....3A:10-8
3:10-9.....3A:10-9
3:10-10.....Repeal as obsolete under
Rule 3:95. The \$500 pro-
vision is apparently never
used
3 10-11.....Repeal, as covered by
Rule 3 95-3 and 5:3-6
3:10-12.....Repeal Citations are abol-
ished. See Rule 3:101-1.
The practice is controlled
by Rules 3:95, 5:3-6 and
3:94-2
3:10-13.....See proposed amendment
to Rule 3:95-5
3:10-14.....3A:10-11
3 10-15.....Repeal as unnecessary.
The last clause, which pro-
vides for an adjournment
where there is a balance
due accountant, goes back
to the days when an ac-
count was settled without
citation or the mailing of
notice, and has no place in
the law today

3:10-16.....The first paragraph of this
statute is repealed as un-
necessary and obsolete in-
so far as it provides for
references by the county
court The second para-
graph will be found in
3A:10-12

3:10-17.....Repeal References are
obsolete under Rule 5:1-2

3 10-18, as am
L 1947, c. 398, §13A:10-13

R S 3 10-19.....Citation is obsolete. See
Rule 3.101-1 The pro-
cedure also has become
obsolete See Rule 3:94-4

3:10-20.....Citation is obsolete See
Rule 3:101-1 The pro-
cedure also has become
obsolete. See Rule 3 94-4

3:10-21.....Citation is obsolete See
Rule 3.101-1 The pro-
cedure also has become
obsolete See Rule 3.94-4

3:10-22.....3A:10-17

C 3:10-23
(L 1938, c. 108, §1)....3A:10-14

3:10-24
(L 1938, c. 108, §2)....3A:10-15

3:10-25
(L. 1938, c. 108, §3)....See amendment to Rule
5.3-6

3:10-26
(L. 1938, c. 108, §4)....Obsolete Citations are
superseded, Rule 3 101-1,
and the procedure is gov-
erned by Rules 3:94-2 and
3:95-6

3:10-27
(L 1938, c. 108, §5)....Repeal as obsolete

3:10-28
(L 1938, c 108, §6) . . .Repeal This is covered
by 3A:10-14

3:10-29
(L 1938, c 108, §7)....3A:10-16

3:10-30
(L 1938, c. 108, §8)....3A:11-4

Chapter 11. COMMISSIONS.

R S. 3:11-1, as am.
L 1939, c. 134, §1.....3A:11-1
3:11-2.....Repealed by L. 1949, c
225, §2

C. 3:11-2.13A:11-3

C. 3:11-2.23A:11-2

R S. 3:11-3.....Repealed by L. 1939, c
134, §3

3:11-4.....Repealed by L 1939, c
134, §3

3:11-5.....3A:11-5

3:11-6.....3A:11-6

3:11-7.....3A:11-7

3 11-8.....3A:11-8

Chapter 12. DISCHARGE AND REMOVAL OF FIDUCIARIES.

R S. 3:12-1. 3A:12-1

DISTRIBUTION TABLE

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
3:12-2	.....	3A:12-2	3:16-11	.....	Was blank
3:12-3	.....	3A:12-3	3:16-12	.....	3A:16-12
3:12-4	.....	3A:12-4	3:16-13	.....	3A:16-15
3:12-5	.....	3A:12-5	3:16-14	.....	3A:16-14a
Chapter 13. ACTIONS BY OR AGAINST FIDUCIARIES.			3:16-15	.....	Repeal. Directions of the court without notice are without effect
R.S. 3:13-1	.....	3A:13-1	3:16-16	.....	3A:16-14b
3:13-2	.....	3A:13-2	3:16-17	.....	3A:16-16a
3:13-3	.....	3A:13-3	3:16-18	.....	3A:16-16b
3:13-4	.....	3A:13-4	3:16-19	.....	3A:16-8
3:13-5	.....	3A:13-5	3:16-20	.....	3A:16-13
3:13-6	.....	3A:13-6	Chapter 17. SALE OR OTHER DISPOSITION OF REAL ESTATE BY FIDUCIARIES.		
3:13-7, as am	.....		R.S. 3:17-1	.....	To be repealed Subject matter covered by revision of Rule 3:77-4
L. 1938, c. 140, §1	.....	3A:13-7 and 3A:13-9	3:17-2; 3:17-3;	.....
3:13-8	.....	3A:13-10	3:17-4; 3:17-5,	.....
3:13-9	.....	3A:13-11	3:17-6	.....	To be repealed Unneces- sary, especially under the equitable powers of the superior and county courts
3:13-10	.....	3A:13-12	3:17-7, as am	.....
3:13-11	.....	3A:11-13	L. 1949, c. 237, §1	.....	3A:17-1
3:13-12	.....	3A:13-14	3:17-8	.....	3A:17-2
3:13-13	.....	3A:13-15	C 3:17-8.1	.....
3:13-14	.....	3A:13-16	(L. 1939, c. 164, §1)	.....	3A:17-3
3:13-15	.....	3A:13-17	3:17-8.2	.....
3:13-16	.....	3A:13-18	(L. 1943, c. 88, §1)	.....	3A:17-4
Chapter 14. PAYMENTS TO EXECUTORS, ADMINISTRATORS AND TRUSTEES; IN GENERAL.			3:17-8.3	.....
R.S. 3:14-1	.....	3A:14-1	(L. 1943, c. 88, §2)	.....	3A:17-5
3:14-2	.....	3A:14-2	3:17-8.4	.....
Chapter 15. COMPROMISE OF CLAIMS.			(L. 1943, c. 88, §3)	.....	3A:17-6
See proposed additional legislation 3A:15-1 to 3A:15-4			R.S. 3:17-9	.....	3A:17-7
Chapter 16. INVESTMENTS.			3:17-10, as am.	.....
R.S. 3:16-1, first 3 lines, and paragraphs "a" through "r"	.....	3A:16-1a through 1r, with similar introductory lines	L. 1939, c. 251, §1	.....	3A:17-8
3:16-1s,	.....		3:17-11, as am.	.....
first sentence	.....	3A:16-11a	L. 1939, c. 251, §2	.....	3A:17-9
3:16-1s,	.....		3:17-12, 3:17-13	.....	To be repealed Unneces- sary, subject matter ade- quately covered by 3A:17-9
second sentence	.....	3A:16-11b	3:17-14, as am	.....
3:16-1t	.....	3A:16-11c	L. 1949, c. 237, §2	.....	3A:17-10
3:16-1u	.....	3A:16-2a	3:17-15	.....	3A:17-11
3:16-1v	.....	3A:16-2b	C. 3:17-15.1	.....
3:16-1w	.....	3A:16-2c	(L. 1948, c. 238, §1)	.....	3A:17-12
3:16-1x	.....	3A:16-2d	3:17-15.2	.....
C 3:16-1.1	.....	3A:16-1s	(L. 1948, c. 238, §2)	.....	3A:17-13
3:16-1.2	.....	3A:16-1t	3:17-15.3	.....
R.S. 3:16-2	.....	3A:16-1u	(L. 1948, c. 238, §3)	.....	3A:17-14
3:16-3	.....	Provisos in 3A:16-1u	3:17-15.4	.....
3:16-4	.....	3A:16-3	(L. 1948, c. 238, §4)	.....	To be repealed
3:16-5	.....	3A:16-5	R.S. 3:17-16, as am.	.....
3:16-6	.....	3A:16-6	L. 1949, c. 237, §3	.....	To be repealed Subject matter is to be covered by new Article 4
3:16-7	.....	3A:16-7	3:17-17	.....	Blank
3:16-8	.....	Omitted - obsolete	3:17-18, as am	.....
C. 3:16-8.1 to 8:20	.....	Repealed 1948	L. 1949, c. 237, §5	.....	To be repealed Subject matter is to be covered by Article 4
R.S. 3:16-9	.....	3A:16-17a-c			
3:16-10	.....	3A:16-10			
C. 3:16-10.1 to 10.4, inclusive	.....	3A:16-4a to 4d, inclusive			
3:16-10.5 to 10.7, inclusive	.....	3A:16-9a to 9c, inclusive			

Title 3 ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS

All the statutes listed below are to be repealed	Comment or proposed new citation	All the statutes listed below are to be repealed	Comment or proposed new citation
3:17-19, as am L 1949, c 237, §6 . . .	To be repealed. Subject matter is to be covered by Article 4	Chapter 20. EXCHANGE, PURCHASE OR SALE OF REAL ESTATE BY FIDUCIARIES.	
3:17-20	Blank	R S 3 20-1 3 20-2	3A 20-1
3 17-21	To be repealed Subject matter is to be covered by Article 4	3 20-3	3A 20-2
3 17-22 to 3.17-26 . . .	Blank	3 20-4	3A 20-3
3:17-27, as am.		3 20-5	3A.20-4
L 1949, c 237, §§8		Chapter 21. SUPPORT, MAINTENANCE AND EDUCATION OF WARD.	
and 9; 3.17-28	To be repealed Subject matter covered by Article 4	R S 3.21-1	3A 21-1 Procedural mat- ter has been deleted— leaving the practice to be governed by Rule 3:101 (3.79)
3:17-29	Blank	R S 3:21-2	3A:21-2 Procedural mat- ter deleted Practice gov- erned by Rule 3 101 (3.79)
3:17-30, 3.17-31	To be repealed Subject matter covered by Article 4	R S 3 21-3	3A 21-3 Procedural mat- ter deleted Practice gov- erned by Rule 3:101 (3.79) Appropriate changes in courts have been noted
3 17-32	To be repealed Unneces- sary The guardian must account in any event	R S 3 21-4	3A.21-4 Procedural mat- ter deleted Practice gov- erned by Rule 3 101 (3:79) Appropriate changes in courts have been noted
3 17-33	To be repealed No reason why court approval should be waived in the special case stated	R S 3 21-5	3A 21-5 Procedural mat- ters deleted Practice gov- erned by Rule 3 101 (3:79) Appropriate changes in courts have been noted
3:17-34	3A:17-15	R S 3 21-6	3A 21-6 Procedural mat- ter deleted Provision for proceeding in summary manner inserted Practice — Rule 3.101 (3:79) Ap- propriate changes in courts noted
3 17-35	3A.17-16	R S 3 21-7	3A 21-7 Procedural mat- ters deleted Provision for proceeding in summary manner inserted Practice — Rule 3 101 (3 79) Ap- propriate changes in courts noted
3 17-36, as am		R S 3 21-7 1	3A 21-7 1 Procedural mat- ters deleted Provision for proceeding in summary manner inserted Practice — Rule 3 101 (3:79) Ap- propriate changes in courts noted
L 1949, c 237, §11.	To be repealed Subject is adequately covered by present Rule 3.75-3	R S 3:21-8	3A.21-8 Appropriate changes in courts noted Procedure governed by Rule 3:101 (3.79), 3.78-5
3 17-37	3A 17-17	R S 3 21-9	3A.21-9 Appropriate changes in courts noted Procedure — 3:101 (3:79), 3.78-5
3.17-38, 3:17-39	To be repealed Where sale is by consent of par- ties sui juris, no statute or rule is required	R S 3:21-10	Repeal The legislature by 3 7-34 1 forbade the ap- pointment of a guardian or fiduciary for a mental incompetent except after incompetency proceedings.
3.17-40	3A:17-18		
3:17-41	To be repealed No sta- tute or rule required		
3:17-42	3A:17-19		
3:17-43	To be repealed Unneces- sary Subject matter is covered by 3A:17-19		
3 17-44	3A 17-20		
3 17-45	3A:17-21		
Chapter 18. PROTECTION OF REAL ESTATE ENCUMBERED OR OTHERWISE IMPERILED.		R S 3 21-7 1	3A 21-7 1 Procedural mat- ters deleted Provision for proceeding in summary manner inserted Practice — Rule 3 101 (3:79) Ap- propriate changes in courts noted
R S. 3 18-1, as am		R S 3:21-8	3A.21-8 Appropriate changes in courts noted Procedure governed by Rule 3:101 (3.79), 3.78-5
L 1949, c 222, p 704,		R S 3 21-9	3A.21-9 Appropriate changes in courts noted Procedure — 3:101 (3:79), 3.78-5
§1	3A:18-1	R S 3:21-10	Repeal The legislature by 3 7-34 1 forbade the ap- pointment of a guardian or fiduciary for a mental incompetent except after incompetency proceedings.
3:18-2	To be repealed		
Chapter 19. IMPROVEMENTS ON REAL ESTATE.			
R S 3:19-1	3A:19-1		
3:19-2	3A 19-2		
3 19-3	3A:19-3		
3:19-4	3A:19-4		
3:19-5	Originally blank		
3 19-6	3A:19-5		
3 19-7	3A.19-6		
3:19-8	3A:19-7		
3.19-9	To be repealed Obsolete		
3:19-10	3A:19-8		

DISTRIBUTION TABLE

All the statutes listed below are to be repealed	Comment or proposed new citation	All the statutes listed below are to be repealed	Comment or proposed new citation
RS 3 21-11 . . .	3A 21-10 Appropriate changes in court noted		an order from the court without notice, permitting the removal, but this would be without due process The judgment would give the fiduciary no protection, and the statute is therefore repealed The matter of notice is covered by Rule 3 79-3, and in fact all questions of practice are controlled by Rule 3 79
RS 3 21-12	3A 21-11 Provision for proceeding on a summary manner inserted Practice — Rule 3.78 Appropriate changes in court noted		
RS 3 21-13	3A 21-12 Provision for proceeding in a summary manner inserted Practice — Rule 3.78 Appropriate changes in court noted		
RS 3 21-14 . . .	3A 21-13 The procedure is covered by Rule 3.78	3 24-4 3 24-5 . . .	3A 24-3 The first sentence is covered by the phrase "if it be in the interests of the persons in interest" found in 3A 24-1 The second sentence will be found in 3A 24-4
Chapter 22. CONVEYANCES OF TRUST PROPERTY WHERE FIDUCIARY UNDER DISABILITY OR DECEASED.			
RS 3 22-1	3A 22-1 Provision for proceeding in summary manner inserted Appropriate changes in court noted Practice — Rule 3 101 (3 79)	3 24-6 3 24-7 . . .	3A 24-5 This statute is now unnecessary The inherent power of the superior court, as a court of equity, to appoint a trustee is undoubted See Perry on Trusts (6th Ed) §38 The statute was enacted in order that under the circumstances provided for therein, a trustee could be appointed in a summary action That matter is now covered by Rule 3.89-3 and 3 101-1 which are applicable where a trustee is appointed to receive a foreign res
RS 3 22-2	3A 22-2 Appropriate changes in court noted		
RS 3 22-3	3A 22-3 Provision for proceeding in a summary manner inserted Practice — Rule 3 101 (3 79) Appropriate changes in courts noted		
Chapter 23. EXECUTION OF POWERS, CONSENTS, AGREEMENTS AND CONTRACTS OF PERSONS UNDER DISABILITY OR DECEDENTS.			
RS 3 23-1	3A 23-1 Provision for proceeding in a summary manner inserted Practice — Rule 3 101 (3 79) Appropriate changes in courts noted		
RS 3 23-2	3A 23-2 Appropriate changes in courts noted		
RS 3 23-3 as am L 1949, c 284, p 876, §1	3A 23-3		
RS 3 23-4 as am L 1949, c 284, p 876, §2	Repeal Procedural		
RS 3 23-5 as am L 1949, c 284, p 877, §3 . . .	3A 23-3 and 3A 23-4		
RS 3 23-6	3A 23-5		
RS 3 23-7	No change 3A 23-6		
Chapter 25. CREDITORS OF DECEDENTS; THEIR RIGHTS AND REMEDIES.			
		RS 3 25-1	3A 25-1
		3 25-2, as am	
		L 1941, c 228, §1	3A 25-2
		3 25-3	3A 25-3 See proposed amendment to Rule 3 98-1
		3 25-4	3A 25-4
		3 25-5	3A 25-5
		3 25-6	To be repealed Statute serves little purpose and is so unfair as to have been emasculated by the court of chancery in O'Donnell v McCann, 77 N J Eq (Ch 1910)
		3 25-7	3A 25-7
		3 25-8	3A 25-8
		3 25-9	3A 25-9
		3 25-10	To be repealed This superfluous statute has been clearly made unnecessary by the amendment to RS 3 25-9
		3 25-11	3A 25-11
		3 25-12	3A 25-12
Chapter 24. TRANSFER OF PROPERTY OUT OF OR INTO STATE.			
RS 3.24-1	3A 24-1 and 3A 24-2		
3.24-2	3A 24-1		
3.24-3	Under RS 3.24-3 it would seem that a fiduciary holding or having control of the property sought to be removed could secure		

Title 3 ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS

All the statutes listed below are to be repealed	Comment or proposed new citation	All the statutes listed below are to be repealed	Comment or proposed new citation
3:25-13.....	3A 25-13	3:25-66	3A:25-66
3:§25-14.....	To be repealed Unneces- sary in view of change made in RS 3 25-9	C 3:25-66.1 (L 1946, c. 283, §1)	3A:25-66.1 and proposed new Rule 3:77-10
3:25-15....	3A:25-15	3:25-66.2 (L 1946, c. 283, §2) ..	3A:25-66.2 and proposed new Rule 3:77-10
3:25-16..	To be repealed. See Clapp (Rev. Ed 1950) sec 704, note 3	3:25-66.:3 (L 1946, c 283, §3) ...	3A:25-66.3
3 25-17..	3A:25-17	3:25-66.4 (L 1946, c. §4)	3A:25-66.4
3:25-18 ...	3A:25-18	3 25-66.5 (L 1946, c 283, §5)	3A:25-66.5
3:25-19 ..	3A:25-19	R S 3:25-67 ..	3A:25-67
3:25-20. .	3A:25-20	3:25-68 ..	3A:25-68 Changes have been made, in accordance with cases cited, so as to make the statute available to contract and tort claim- ants whose claims have been admitted by the ex- ecutor or administrator or have been reduced to judgment
3:25-21, as am L 1944, c 130.	3A:25-21 and proposed new Rule 3 77-9	3:25-69.....	3A:25-69
3:25-22	3A 25-22	3:25-70.....	3A:25-70. References to obsolete terms of pleading have been omitted
3:25-22 1. . . .	3A:25-22 1	3:25-71.....	3A:25-71
3:25-23	3A:25-23	3:25-72.....	3A:25-72
3:25-24	3A:25-24	3:25-73..	3A:25-73
3:25-25	3A 25-25		
3:25-26. . . .	3A:25-26		
3:25-27. . . .	3A 25-27		
3 25-28. . . .	3A 25-28		
3:25-29	3A:25-29		
3:25-30. . . .	3A:25-30		
3:25-31. . . .	3A 25-31		
3:25-32	3A 25-32		
3 25-33. . . .	3A:25-33		
3 25-34	3A:25-34		
3 25-35	3A:25-35		
3 25-36	3A 25-36		
3 25-37	3A 25-37		
3:25-38	3A 25-38		
3 25-39	3A 25-39		
3:25-40. . . .	3A:25-40		
3:25-41	3A 25-41		
3:25-41 1	3A 25-41 1 Reference to court rules has been omitted as unnecessary		
3:25-42	3A:25-42		
3:25-43	3A 25-43		
3:25-44	3A 25-44		
3:25-45	3A:25-45		
3 25-46	3A:25-46		
3 25-47	3A 25-47		
3:25-48 to 3 25-50.	3A:25-48 to 3A:25-50. Blank		
3 25-51.....	3A:25-51		
3:25-52.....	3A 25-52		
3:25-53. . . .	3A 25-53		
3:25-54	3A 25-54 Blank		
3:25-55.....	3A:25-55		
3 25-56.....	3A:25-56		
3 25-57. . . .	3A 25-57		
3:25-58	3A:25-58		
3:25-59	3A 25-59 Changes made to conform with Rules 4:2-1(b) and 1:2-5(b)		
3:25-60. . . .	3A:25-60		
3:25-61. . . .	3A 25-61		
3:25-62. . . .	3A 25-62		
3:25-63. . . .	3A 25-63		
3:25-64.....	3A 25-64. Reference to en- forcement by attachment is omitted under Rule 3 80-2		
3:25-65.....	3A 25-65		

Chapter 26. DEVICES, LEGACIES AND DISTRIBUTIVE SHARES.

3 26-1.	3A:26-1. (a) Paragraph 1 is obsolete—more than one year has elapsed since 1943 statute Statutory time for payment of all legacies under prior wills has expired. (b) Change “the effecting date hereof” to “April 6, 1943 which was “the effective date.” (c) Amend this section to clarify date from which interest is payable. Not now clear whether pay- able from year after death or 18 months after probate Cf. Bahr v. Cooper (Ch.), 141 N. J. E 584, 589 and Phraner v Stone (Ch), 137 N. J. E. 284, 289, which indicate that interest runs from 18 months after probate but are in conflict with Davi- son v. Rake (E&A.), 45 N J. E. 767, which con- strued earlier statute allowing one year after probate as not changing rule that interest was payable from one year after death
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DISTRIBUTION TABLE

All the statutes listed below are to be repealed	Comment or proposed new citation	All the statutes listed below are to be repealed	Comment or proposed new citation
3:26-2	3A:26-2. Repeal last sentence and suggest substitution of new rule before or after Rule 3 97-1		cause it bars rights and claims to the estate
3:26-3	Omitted Repeal Court has power to enforce its judgments. If any additional statutory power is necessary it should be in Title 2A	3:26-13... ..	3A:16-11 Language only to conform to new system
3:26-4	Omitted. Repeal. Appeal may be taken under general rules as to appeals	3:26-14....	3A:26-12. Language only to conform to new system
3:26-5	3A:26-3. Language changed only to conform to new system	3:26-15... ..	3A:26-13. Language only to conform to new system. Clause omitted because covered by rules
3:26-6	3A:26-4 Words, "Such surplusage * * * each according to his respective right" in second paragraph omitted because they are themselves surplusage Distribution must be as prescribed in section 3:5-1, et seq. Repeal last paragraph which is omitted. Appeals may be taken under general rules Other language changed only to conform to new system	3:26-16	3A:26-14. Language only to conform to new system
3:26-7	3A:26-5. Language changed only to conform to new system	3:26-18.2 (L 1941, c 171)	3A:26-15. This section transferred to this article because more appropriate
3:26-8... ..	3A:26-6. Language changed only to conform to new system. This procedure might be by rule but it is not suggested because it bars rights and claims to the estate	3:26-18... ..	3A:26-16 Language changed only to conform to new system
3:26-9	3A:26-7. Language changed only to conform to new system This procedure might be by rule but it is not suggested because it bars rights and claims to the estate	3:26-17....	3A:26-17 Language changed only to conform to new system
3:26-10.....	3A:26-8 Language changed only to conform to new system This procedure might be by rule but it is not suggested because it bars rights and claims to the estate	3:26-19....	3A:26-18 Language changed only to conform to new system
3:26-11	3A:26-9. Language changed only to conform to new system This procedure might be by rule but it is not suggested because it bars rights and claims to the estate	3:26-20 as am L 1949, c 83	3A:26-19 None
3:26-12.....	3A:26-10. Language changed only to conform to new system. This procedure might be by rule but it is not suggested because it bars rights and claims to the estate	2:26-21	3A:26-20 None
		3:26-22.....	3A:26-21. None
		3:26-23.....	3A:26-22 Language changed only to conform to new system, except to omit "double" in line 1 of par 2 Amend this section to conform to 3A:26-19
		3:26-24.....	3A:26-23 Language changed only to conform to new system
		3:26-25	3A:26-24. None
		3:26-26.....	3A:26-25 Language changed only to conform to new system
		3:26-27... ..	3A:26-26. None
		3:26-28... ..	3A:26-27. None
		3:26-29	3A:26-28. None
		3:26-30.....	3A:26-29. None
		3:26-30 1.....	3A:26-30. Language changed to conform to new system and to clarify
		3:26-31	3A:26-31 Language changed to conform to new system. Procedural provisions omitted because covered by general rules
		3:2-32... ..	3A:26-32 Language changed only to conform to new system
		3:26-33.....	3A:26-33 Language changed only to conform to new system Considered omission of paragraphs 2 and 3 as procedural, but this is not like ordinary partition and I doubt wisdom of letting it fall

Title 3 ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS

All the statutes listed below
are to be repealed

Comment or proposed
new citation

All the statutes listed below
are to be repealed

Comment or proposed
new citation

under Rule 3 75-1. This is
a very special and unusual
procedure and I think it
better not to change it

3 26-34

3A 26-34 None

3 26-35

3A 26-35 Language
changed only to conform
to new system

3 26-36

Procedural details of this
and 3 26-37 and 3 26-38
are omitted because cover-
ed by rules

3 26-37

Omitted See remarks on
3 26-36

3 26-38

Omitted See remarks on
3 26-36

3 26-39

3A 26-37 Language
changed only to conform
to new system Considered
omission of provisions as
to duties of clerk, etc, but
Rule 3 67 does not fully
cover the situation More-
over, I feel that the prac-
tice now covered so fully
in Clapp's new book
should not be changed un-
less necessary It is pre-
ferable to have this prac-
tice as explained so well
in that work

3 26-40

3A 26-38 None

3 26-41

3A 26-39 Language
changed only to conform
to new system

3 26-42

3A 26-40 Language
changed only to conform
to new system

3 26-43

3A 26-41 None

3 26-44

3A 26-42 Language
changed only to conform
to new system

C 3 26-45
(L 1950, c 327)

3A 26-43

3 26-46

3A 26-44

3 26-47

3A 26-45

3 26-48

3A 26-46

3 26-49

3A 26-47

3 26-50

3A 26-48

3 26-51

3A 26-49

3 26-52

3A 26-50

3 26-53

3A 26-51

Chapter 26A. EXONERATION OF MORTGAGED REAL ESTATE.

R S 3 26A-1. 3A 26A-1

Chapter 27. GENERAL PROVISIONS.

R S 3 27-1 3A 27-1
3 27-2 3A 27-2
3 27-3 3A 27-3
3 27-4 3A 27-4
3 27-5 3A 27-5

Chapter 28. APPOINTMENT OF GUARDIANS.

3 28-1

3A 28-1

3 28-2

3A 28-2

3 28-3

Proposed new Rule
5 3-9(a)

3 28-4

Proposed new Rule
5 3-9(b)

3 28-5

Repeal as unnecessary The
appointment of a guardian
of a minor beneficiary of
a federal agency is to be
undertaken in the surro-
gate's court in the simple
manner provided for the
appointment of all guard-
ians of minors

3 28-6

Proposed new Rule
5 3-9(c)

3 28-7

Proposed new Rule
5 3-9(e)

3 28-8

Proposed new Rule
5 3-9(e)

3 28-9

Proposed new Rule
5 3-9(e)

3 28-10

Repeal Veterans adminis-
tration advises that this
section is obsolete

Chapter 29. DETERMINATION OF MENTAL INCOMPETENCY.

3 29-1

3A 29-1

3 29-2 to 3 20-5,
inclusive

Proposed new Rule
5 3-9(d)

3 29-6

Proposed new Rule
5:3-9(f)

Chapter 30. ACCOUNTS OF GUARDIANS.

3 30-1

3A 30-1

3 30-2

3A 30-2

3 30-3

Repeal as unnecessary.
3A 30-1 provides that the
proceeding for the settle-
ment of accounts shall be
"in a summary action on
order to show cause"

3 30-4

See above comment as to
3.30-3 Proposed new
legislation 3A 27-6 pro-
vides for making the ad-
ministrator of veterans
affairs a party in interest
in all proceedings relative
to guardians appointed
under the uniform veter-
ans' guardianship law.
Sureties are made neces-
sary parties by Rule
3:95-3

3 30-5

3A 30-3

3 30-6

As to the discharge of a
guardian of an incompet-
ent, see Rule 5:3-9(f).
Guardians of infants who

DISTRIBUTION TABLE

All the statutes listed below are to be repealed	Comment or proposed new citation	All the statutes listed below are to be repealed	Comment or proposed new citation
	are entitled to benefits from a federal agency will have the same status as guardians of any infants	Chapter 35. SALE OR MORTGAGE TO PAY LEGACIES OR OTHER ENCUMBRANCES.	
3 30-7	3A-30-4	RS 3 35-1	Use (1) and (2) instead of (a) and (b) in lines 7 and 9 and (3) instead of (c) in line 11 Section to be here- after known as 3A 35-1
Chapter 31. MANAGEMENT OF ESTATES.		RS 3 35-2	Section to be hereafter known as 3A 35-2
3 31-1	3A-31-1		
3 31-2	3A-31-2		
3 31-3	3A-31-3		
Chapter 32. HOSPITALIZATION.		Chapter 36. SALE OF REAL ESTATE LIMITED OVER TO INFANTS, MENTAL INCOMPETENTS, PERSONS NOT IN BEING OR ON CONTINGENCY.	
3 32-1 as am by L 1947, c 409, §1	Veterans administration advises that this statute is obsolete and in place thereof recommends 3 32-1 to 3 32-3 proposed addi- tional legislation, which has now been adopted as a uniform act in 34 states	RS 3 36-1	Section to be hereafter known as 3A 36-1
		RS 3 36-2	Repeal, covered by sug- gested amendment to Rule 3 78-1 etc
		RS 3 36-3	Repeal, covered by sug- gested amendment to Rule 3 78-1 etc.
		RS 3 36-4	Repeal, covered by sug- gested amendment to Rule 3 78-1 etc
Chapter 33. PUBLIC GUARDIAN OF INCOMPETENT VETERANS.		RS 3 36-5	Repeal, covered by Rule 3:4-5
3.33-1 to 3:33-11	3A:33-1 to 3A:33-11	RS 3 36-6	Repealed by L 1949, c 278
		RS 3.36-7	Repeal, covered by sug- gested amendment to Rule 3.78-1 etc
Chapter 33A. PROPERTY RECEIVED FROM SOURCES OTHER THAN UNITED STATES GOVERNMENT.		RS 3 36-8	Section to be hereafter known as 3A-36-2
3 33A-1, as am. by L 1950, c. 117	3A:31-4. See also pro- posed new Rule 5.3-9(g)	RS 3 36-9	Repeal, covered by sug- gested amendment to Rule 3.78-1 etc
3 33A-2	Repeal. Provisions for notice are not necessary, since the action is to be a summary action under the rules	RS 3 36-10	Section to be hereafter known as 3A 36-3
3 33A-3	3A-31-5	RS 3 36-11	Delete words "section 3 36-9 of this title" and substitute "the rules of superior court" Section to be hereafter known as 3A-36-4
3 33A-4	3A-31-6		
3 33A-5	Unnecessary See 3A 27-3	RS 3 36-12	Section to be hereafter known as 3A 36-5
Chapter 34. SALE TO PAY LOCAL OR PUBLIC IMPROVEMENT ASSESSMENTS.		RS 3.36-13	Section to be hereafter known as 3A-36-6
RS 3 34-1	Comma to be inserted after word "ordered" in line 1 of sub-paragraph 2, section to be hereafter known as 3A.34-1	RS 3 36-14	Section to be hereafter known as 3A 36-7
RS 3:34-2	Delete words "or person" from line 4 because 3.34-1, line 7 reads "and order an officer designated by the court for that purpose to sell such real estate," etc Section to be hereafter known as 3A:34-2	RS 3 36-15	Delete words "notice as required by this chapter" and substitute "an order to show cause as required by the rules of the su- perior court" Section to be hereafter known as 3A 36-8
		RS 3 36-16	Section to be hereafter known as 3A 36-9
RS 3 34-3	Delete words "or person" for reason above given Section to be hereafter known as 3A:34-3	RS 3 36-17	Repealed by L 1949, c 278
		RS 3 36-18	Section to be hereafter known as 3A-36-10
		RS 3 36-10	Section to be hereafter known as 3A 36-11

Title 3. ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS

All the statutes listed below are to be repealed	Comment or proposed new citation	All the statutes listed below are to be repealed	Comment or proposed new citation
R.S. 3:36-20.....	Section to be hereafter known as 3A:36-12		be as in other civil actions. (Rule 3:75-1)
R.S. 3:36-21.....	Section to be hereafter known as 3A:36-13	3 38-18	Obsolete All relief form- erly provided by R.S. 3:38-14 to 3 38-20 may now be obtained by ordi- nary civil action. Writs of dower and curtesy are superseded. Actions for dower and curtesy shall be as in other civil actions. (Rule 3:75-1)
Chapter 37. IN GENERAL.			
3:37-1... ..	3A:37-1		
3:37-2... ..	3A:37-2		
3:37-3... ..	3A:37-3		
3:37-4... ..	3A:37-4		
Chapter 38. ACTIONS RELATING TO DOWER AND CURTESY; WRITS OF DOWER.		3 38-19	Obsolete All relief form- erly provided by R.S. 3:38-14 to 3 38-20 may now be obtained by ordi- nary civil action Writs of dower and curtesy are superseded. Actions for dower and curtesy shall be as in other civil actions. (Rule 3.75-1)
3:38-1.....	3A:38-1	3.38-20	Obsolete All relief form- erly provided by R.S. 3:38-14 to 3.38-20 may now be obtained by ordi- nary civil action Writs of dower and curtesy are superseded. Actions for dower and curtesy shall be as in other civil actions. (Rule 3:75-1)
3:38-2 Blank .. .	3A:38-2 Blank		
3:38-3 Blank . . .	3A:38-3 Blank		
3:38-4.....	3A:38-4		
3:38-5.....	3A:38-5		
3:38-6.....	3A:38-6		
3:38-7.....	3A:38-7		
3:38-8.....	3A:38-8		
3:38-9.....	3A:38-9		
3:38-10.....	3A:38-10		
3:38-11.....	3A:38-11. Revised in ac- cordance with Rules 4:2-1(b) and 1:2-8		
3:38-12.....	3A:38-12		
3:38-13.....	3A:38-13		
3:38-14.....	Obsolete. All relief form- erly provided by R.S. 3:38-14 to 3:38-20 may now be obtained by ordi- nary civil action Writs of dower and curtesy are superseded. Actions for dower and curtesy shall be as in other civil actions (Rule 3:75-1)		
3:38-15... ..	Obsolete All relief form- erly provided by R.S. 3:38-14 to 3 38-20 may now be obtained by ordi- nary civil action. Writs of dower and curtesy are superseded. Actions for dower and curtesy shall be as in other civil actions. (Rule 3:75-1)		
3:38-16... ..	Obsolete. All relief form- erly provided by R.S. 3:38-14 to 3:38-20 may now be obtained by ordi- nary civil action Writs of dower and curtesy are superseded. Actions for dower and curtesy shall be as in other civil actions (Rule 3.75-1)		
3:38-17.....	Obsolete All relief form- erly provided by R.S. 3:38-14 to 3:38-20 may now be obtained by ordi- nary civil action Writs of dower and curtesy are superseded. Actions for dower and curtesy shall		
Chapter 39. BAR IN GENERAL.		3:39-1.....	3A:39-1
		3:39-2.....	3A:39-2
		3:39-3.....	Obsolete
		3:39-4.....	3A:39-3
		3:39-5.....	3A 39-4
		3 39-6.....	3A:39-5
Chapter 40. SALE OR MORTGAGE OF REAL ESTATE FREE OF DOWER OR CURTESY.		R.S. 3:40-1 (as am by L 1949, c 223, p. 705) ..	3A:40-1
		R.S. 3:40-2 (as am by L 1949, c. 223, p. 706) ..	Proposed amended Rule 3:75-3 makes this section unnecessary
		R.S. 3:40-3 (as am. by L 1949, c 223, p. 706) ..	3A 40-2
		R.S. 3:40-4 (as am. by L 1950, c. 114, p. 213) ..	3A:40-3
		R.S. 3:40-5 (as am by L 1949, c 223, p. 707) ..	3A:40-4
		R.S. 3:40-6 (as am. by L. 1949, c. 223, p 707) ..	See proposed new Rule. 3:75-2 1
		R.S. 3:40-7 (as am by L 1950, c 114, p 213) ..	3A:40-5
		R.S. 3:40-8 (as am by L 1949, c 223, p. 708) ..	3A:40-6
		R.S. 3:40-9 (as am by L 1949, c. 223, p. 708) ..	3A:40-7

DISTRIBUTION TABLE

All the statutes listed below are to be repealed	Comment or proposed new citation	All the statutes listed below are to be repealed	Comment or proposed new citation
R S. 3:40-10 (as am. by L. 1950, c 114, p 214)	Sections 10 and 11 com- bined in new §3A.40-8		into chapter 42, dealing with the disposition of the property of persons pre- sumably dead
Chapter 42A. ABSENTEES IN ARMED FORCES OR MERCHANT MARINE.		Chapter 44. FIDUCIARIES GENERALLY.	
C. 3:42A-1 to 3:43A-3 L. 1944, c 242.	The substance of this chapter is to be integrated with chapter 41 of title 3, dealing with conservation of the property of absent- ees generally	R S. 3:44-1.....	3A:44-1
		3:44-2.	3A:44-2
		3:44-3.....	3A:44-3
		3:44-4.	3A:44-4
		3:44-5.....	3A:44-5
		3:44-6.....	3A:44-6
		3:44-7.....	3A:44-7
		3:44-8.....	3A:44-8
		3:44-9.....	3A:44-9
		3:44-10.	3A:44-10
		3:44-11.....	3A:44-11
		3:44-12.....	3A:44-12
		3:44-13.....	3A:44-13
		3:44-14.....	3A:44-14
Chapter 43. TESTAMENTARY TRUSTS AFFECTED BY ABSENCE.			
R S. 3:43-1 to 3:43-23. . .	The substance of this chapter is to be integrated		

Table Showing Disposition of Miscellaneous Sections Contained in Title 4 to Title 49 of the Revised Statutes

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
Title 4. Agriculture and Domestic Animals.			9 18-15		9 18-28
R S 4 23-1		Repeal. Unnecessary	9 18-16		9 18-16
4 23-2		4 23-1	9 18-17		9 18-17
4 23-3 to 4 23-10		See Rules 7:12A and 5 2-4	C 9 18-17 1		9 18-19
4 23-11		Minor change	9 18-17 2		9 18-20
4 23-12		Repeal Covered by 4 23-1 as proposed to be amended	9 18-17 3		9 18-21
4 23-13		The provision of this statute which specifies the officer to whom the summons or warrant is directed is preserved The remainder of the section is covered by Rule 7:12A	9 18-17 4		9 18-22
			9 18-17 5		9 18-23
			9 18-17 6		9 18-24
			9 18-17 7		9 18-25
			9 18-17 8		9 18-26
			9 18-17 9		9 18-27
			9 18-17 10		Obsolete, to be repealed
4 23-14		No change	R S 9 18-18		Obsolete, to be repealed
4 23-15		Amend The provision of this section allowing for an arrest without a warrant is preserved The remainder of the section is adequately covered by Rule 7:12A			Second sentence to be found in proposed Rule 6 2-7(e)
4 23-16 to 4 23-18		Repeal See Rule 7 12A	9 18-19.		Obsolete, to be repealed. To be found in Rule 6:3-2
Title 9. Children—Juvenile and Domestic Relations Courts.			9 18-20		9 18-13
R S 9 2-1		2A 50-29	9 18-21		Obsolete; to be repealed. To be found in present Rules 6 4-1, 6.4-2, 6:4-3, 6 6-1, 6 6-2, 6.6-3, 6.6-4 and 6 6-5
9 2-2		2A 50-30			Obsolete; to be repealed. To be found in Rule 6:5-1 and present Rule 6:7-1 as amended, and 6:7-2, 6:7-9 and proposed new Rule 6 2-10
9 2-3		2A 50-31	9 18-23		Obsolete, to be repealed
9 2-4		2A 50-32			To be found in Rule 6:2-3
9 2-5		2A 50-33	9 18-24		Obsolete, to be repealed.
9 2-6		2A 50-34			To be found in Rule 6 6-3
9 2-7		2A 50-35	9 18-25		Obsolete, to be repealed
R S 9 18-1		9 18-1			Covered by proposed new amendment to Rule 6:6-6 designated (c), (d) and (e)
9 18-2		9 18-2	9 18-26		To be relocated as article 2, under chapter 12, of this title
9 18-3		9 18-3	9 18-27		Obsolete; to be repealed
9 18-4		9 18-4	9 18-28		Obsolete, to be repealed. To be found in proposed new Rule 6 2-10
9 18-5, as am					Obsolete, to be repealed.
L 1945, c 291, p 842,			9 18-29		To be found in proposed new Rule 6:5-2 (a) and (b)
§1)		9 18-5	R S 9 18-30		First two paragraphs obsolete, to be repealed Found in Rule 6.5-3 and 6 5-4
9 18-6		9 18-6			Last paragraph made part of 9 18-28
9 18-7		9 18-7	9 18-31, (as am.		
9 18-8		9 18-8	L 1946, c 77, p 279,		
9 18-9		9 18-9	§4)		9 18-29
9 18-10		Incorporated in 9 18-8 and 9 18-32	9 18-32		9 18-31
9 18-11		9 18-10			
9 18-12, (as am L					
1943, c 97, p 319, §1,					
L 1946, c 77, p 276,					
§1, L 1948, c 284, p					
1191, §1)		9 18-11			
C 9 18-12 1		9 18-14			
R S 9 18-13		9 18-15			
9 18-14, (as am L					
1946, c 77, p 268, §1,					
L 1950, c 337, p 1117,					
§1)		9 18-18			

TITLE 4 TO TITLE 49

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
9 18-33	.	9 18-30	14 14-16	..	Amended
9 18-34		First paragraph in 9:18-32, second paragraph in Rule 6 2-2, third paragraph in Rule 6 2-2 and new pro- posed Rule 6 2-7(d)	14 14-17		Amended
		Obsolete, to be repealed	14 14-18	.	Amended
9 18-35	.	To be found in Rule 6 2-7	14 14-19		Not amended This statute is preserved notwithstand- ing Rule 3 25, because of the provision therein al- lowing an action to pro- ceed against the corpora- tion where a receiver dies and no new receiver is appointed
9 18-36	.	9 18-34			
9 18-37		9:18-33			
9 21-1	..	Obsolete, to be repealed			
		To be found in Rule 6 7-15			
9 21-2		Obsolete, to be repealed	14 14-20		Amended
		To be found in Rule 6 7-15	14 14-21		Not amended
9 22-8		Obsolete, to be repealed	14 14-22	.	Amended
		To be found in new legis- lation designated 9 18-35 to 9 18-41	14 14-23		Not amended
			14 14-24	..	Amended
9 22-9		Last paragraph covered by Rule 6 2-3(d) So much of 9.22-9 as refers to de- tention of a child is carried over as legislation in the provisions of the municipal juvenile adjustment committee section 9 18-35 to 9 18-41	14 14-25		Amended
			14 14-26		Amended
			14 14-27	.	Amended
			14 14-28		Blank
			14 14-29		Blank
			14 14-30		Repeal In view of Rule 3 53 this section is un- necessary
9 22-10	.	9 18-32	14 14-31		The first paragraph of this section is to be repealed, as the matter is covered by Rules 3 53-3 and 3 53-4(b)
9 22-11	..	9.22-8 If proposed new legislation 9 18-35 to 9 18-41 is enacted, then present section 9 22-11 9.22-12, which are not af- fected by the proposed new legislation should fol- low immediately after 9 22-7 and be given these numbers	14 14-32		This is to be repealed, as Rules 3 53-3 and 3.53-4 cover the subject
			14 14-33		This section is to be re- pealed, as Rule 3.53-5 covers the matter
			14 14-34		Amended
9 22-12.	.	9 22-9 If proposed new legislation 9 18-35 to 9 18-41 is enacted, then present section 9 22-11 9 22-12, which are not af- fected by the proposed new legislation should fol- low immediately after 9 22-7 and be given these numbers	14 14-35		This section is to be re- pealed The authority of the master should be the same as that provided under Rule 3 53
			14 14-36		Amended
			14 14-37	..	Amended
			14 14-38	..	Not amended
			14 14-39	.	Amended
			14 14-40	..	Not amended
			14 14-41	..	Not amended
			14 14-42	..	Not amended
			14 14-43	....	Amended
			14 14-44, as am by L 1948, c 134, §1		Amended
			14 14-45, as am by L 1950, c 67, §1	..	Not amended
			14 14-46, as am by L 1948, c 134, §3		Amended
			C 14 14-46 1 (L 1948, c 417, §1)		Not amended
			R S 14 14-47	.	Amended
			14 14-48	.	Not amended
Title 14. Corporations, General.			Title 20. Eminent Domain.		
R S 14 14-1	.....	Not amended	R S 20 1-1	.	No change
14 14-2	....	Not amended	20.1-2	....	To be amended. Also see Rule 3 76A-2
14 14-3	..	Amended			
14 14-4	....	Amended			
14 14-5	....	Not amended			
14 14-6	....	Amended			
14 14-7	.....	Amended			
14 14-8	..	Not amended			
14 14-9	...	Amended			
14 14-10	...	Amended			
14 14-11	.....	Amended			
14 14-12	....	Not amended			
14 14-13	....	Amended			
14 14-14	....	Amended			
14 14-15	.....	Not amended			

DISTRIBUTION TABLE

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
20:1-3	...	Repeal Under R S 20:1-2 as proposed to be amended, the proceeding for the appointment of commissioners becomes a summary action under Rule 3:79, and hence Rule 3 79-3 covers the subject dealt with in 20:1-3	20:1-19	...	Repeal Proposed Rules 3.76A-3 and 3.76A-4 take the place of this section
C. 20:1-3 1, (as am L 1947, c 353, §1)	..	To be amended so as to make it conform with the procedure in a summary action	20:1-20	.....	Proposed Rule 3:76A-4 takes the place of this section
20:1-3.2 (L 1942, c 14, §2)	..	Repeal. Unnecessary, now that the court of chancery is merged into the superior court. See C 20:1-3 1 as proposed to be amended	20:1-21	.....	Rule 3.76A-6 takes the place of this section
20:1-3 3 to 20:1-3 10 (L 1942, c. 14, §§3 to 10)	.....	Minor amendments to make it conform to the proposed practice	20:1-22	.....	Minor amendment
R S 20:1-4	.....	To be amended The words "real estate" which are used in the lis pendens act and are defined in R S. 1:1-2 have been substituted in place of the word "land." There are 2 minor amendments also in this section	20:1-23 to 20:1-26	.....	Minor amendments conforming these sections to the proposed practice
20:1-5	.....	Repeal Proposed Rule 3.76A-2 covers the first portion of this statute Rule 3:17-4 provides a method for designating an unknown person in interest, and Rule 3:79-3 provides a method for serving him	20:1-27	.....	Repeal This is covered by an amendment to R S. 20:1-15
20 1-6	.....	To be amended to conform with the procedure in a summary action	20:1-28	.....	Minor amendment conforming it to the proposed practice
R S 20:1-7	.....	Minor amendments conforming the statute with the proposed practice	20:1-20	.....	No change
20:1-8	.....	To be amended The principal change substitutes an appeal in lieu of prerogative writ for the old certiorari	20:1-30, (as am. L 1938, c 21, §1) to 20:1-36 (as am L 1938, c 21, §2)	.....	Minor amendments to make these sections conform to the proposed practice
20:1-9 to 20:1-14	.....	Minor amendments conforming these sections to the proposed practice	Title 26. Health and Vital Statistics.		
20:1-15	.....	To be amended so as to include all the provisions now found in R S 20:1-27	26:2-44	.....	Repealed L. 1947, c 177, p 815, §65
20 1-16	.....	The amendment here renders applicable the rules of court to this statutory proceeding	26:2-45	.....	Repealed. L 1947, c 177, p. 815, §65
20:1-17 and 20 1-18	.....	Minor amendments conforming these sections to proposed practice	26:2-46	.....	Repealed L 1947, c 177, p. 815, §65
			26:2-47	.....	Repealed L. 1947, c. 177, p. 815, §65
			26:2-48	.....	Repealed L. 1947, c 177, p. 815, §65
			C 26:1A-10	.....	To be amended
			26:1A-27	.....	To be amended
			26 1A-28	.....	To be amended
			26-1A-20	.....	To be amended
			26:2A-30	.....	To be amended
			26 1A-31	.....	To be amended
			26:2-65	.....	To be amended
			26 2-73	.....	To be amended
			26:2-74	.....	To be amended
			26:2-75	.....	To be amended
			26:2-76	.....	No change required
			26 2-77	.....	No change required
			26:2-78	.....	To be amended
			26:2-79	.....	Repeal Unnecessary, see Rule 8:7-8 form 9, local criminal courts
			26.2-80	.....	To be amended
			26:3-20 1	.....	To be amended
			R S 26:3-51	.....	Repeal Governed by Rule 3:65-2
			26:3-52	.....	To be amended
			26 3-56	.....	To be amended
			26:3-57	.....	To be amended
			26:3-58	.....	To be amended
			26:3-59	.....	To be amended
			26:3-60	.....	No change required
			26:3-62	.....	No change required
			26:3-72	.....	To be amended

TITLE 4 TO TITLE 49

All the statutes listed below are to be repealed	Comment or proposed new citation
26:3-73	No change required
26 3-74	To be amended
26 3-75	No change required
26 3-76	Repeal See Rule 8:7-8, form 9, local criminal courts
26 3-77	To be amended
26 3-78	To be amended
26 3-79	To be amended
26 3-80	To be amended
26 3-81	To be amended
C 26 3B-11	To be amended
26:3B-12	To be amended
26 3B-13	To be amended
26 3B-14	To be amended
26 3B-15	To be repealed. See Rule 8:7-8, form 9, local criminal courts
R.S. 26 4-4	To be amended
26 4-37	To be amended
26 4-49	To be amended
C 26 4-49 7	To be amended
26 4-51 57	To be amended
26 4-122	To be amended
26 4-123	To be amended
26 4-130	To be amended
R.S. 26 6-5	To be amended
26 6-21	To be amended
26 6-22	To be amended
26 8-38	To be amended
C 26 8-40 3	To be amended
36 8-40 4	To be amended
R.S. 26 10-18	To be amended
26 11-25	To be amended
26 11-30	To be amended
26 11-31	To be amended
26 11-32	To be amended
26 11-33	No change required
26 11-34	To be amended
26 11-35	To be amended
26 11-36	To be amended
26 11-37	No change required

Title 27. Highways.

27 7-44 1	To be amended
27 16-43	To be amended
27 16-44	To be amended
27 16-45	To be amended
27 16-46	No change required
27 16-47	To be amended
27 16-48	To be amended
27 16-49	To be amended
27 16-50	No change required
27 16-51	To be amended
27 16-52	To be amended
27 16-53	To be amended
27 16-65	To be amended
27 16-66	To be amended
27 16-67	To be amended
27 20-3	To be amended
27 20-4	To be amended
27 20-6	To be amended
27 21-3	To be amended

Title 29. Hotels.

C. 29:1-42	To be amended
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All the statutes listed below are to be repealed	Comment or proposed new citation
R.S. 29 3-12	To be amended
29 3-19	To be amended

Title 30. Institutions and Agencies.

30:1-16	To be amended
30:1-17	To be amended
30.1-18	To be amended
30 4-23	To be amended
30 4-106 2	To be amended
30 4-138	To be amended
C 30 5-4 3	To be amended
R.S. 30 5-19	To be amended
30 5-20	To be amended
30 5-21	To be amended
50 5-22	To be amended
30 5-23	No change required
30 5-24	No change required
30 5-25	No change required
30 5-26	No change required
30 5-27	To be amended
30 5-28	To be amended
30 5-29	No change required
30 5-30	No change required
30 5-31	To be amended
30 6-3	To be amended
30 6A-2	To be amended
30 8-28	To be amended
30 8-33	To be amended
30 9-2	To be amended
30 9-10	To be amended
30 9-53	To be amended
30 9-54	To be amended
30 9-57	To be amended
30 9-65	To be amended
30 9-66	To be amended
30 9-68	To be amended

Title 32. Interstate and Port Authorities and Commissions.

C. 32:1-35.15	To be amended
32:1-35 34	To be amended
R.S. 32:1-149	To be amended
32:2-12	To be amended
32 2-13	To be amended
32 9-9	To be amended
32 9-10	To be amended
32 13A-15	To be amended
C. 32:13B-15	To be amended
R.S. 32:2-14	To be repealed. Unneces- sary. All funds will be in the superior court
32 14-13.2	To be amended
32 14-22	To be amended
32 14-23	To be amended
32 14-24	To be amended
32 14-25	To be amended
32 14-26	To be amended

Title 33. Intoxicating Liquors.

33:1-1	To be amended
33:1-21	Repealed by L. 1942, c. 159, p. 466
33:1-21.1	Repealed by L. 1942, c. 159, p. 466

DISTRIBUTION TABLE

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
33 1-21 2		Repealed by L 1942, c 159, p 466	39 5-18		Repeal Unnecessary See Rule 2 11(c)
33 1-35		To be amended	39 5-19		Repeal Governed by Rule 2 11(g)
33 1-56		No change necessary	39 5-20		Repeal Unnecessary, see Rule 2 11(h)
33 1-57		No change necessary	59 5-21		Repeal Unnecessary, see Rule 2 11(a) and (h)
33 1-66		To be amended	39 5-22		Amend
33 2-6		To be amended	39 5-23		Repeal Inconsistent with Rules 2 11, and 4-5-1. State v Yaccarino, 3 N J. 291 (1949) and State v Smith, 6 N J. Super. 85 (App Div 1949)
Title 37. Marriages and Married Persons.			39 5-24		No change required
37 1-13		To be amended	39 5-25		Amend
37 2-21		To be amended	39 5-26		Repeal Inconsistent with Rule 8.10-1. See form 11
37 2-22		To be amended	39 5-27		No change required
37 2-25		To be amended	39 5-28		Repeal Governed by Rule 8 3-2 (3) b
37 2-26		Repeal To be governed by Rule 3 78	39 5-29		Amend
37 2-27		To be amended	39 5-30		No change required
37 2-28		To be amended	39 5-31		Amend
Title 38. Militia—Soldiers, Sailors and Marines.			39 5-32		No change required
C 38 5-41		38 5-41 Reference to jury duty deleted and incor- porated in some aspects (active duty) with 2A 86-2	39 5-33		No change
R S 38 9-7		To be amended	39 5-34		No change
38 9-8		To be amended	39 5-35		No change
38 9-11		To be amended	39 5-36		No change
38 9-12		To be amended	39 5-37		Repeal Governed by R S 22 3-9
Title 39. Motor Vehicles and Traffic Regulations.			39 5-38		Amend
39 1-1		To be amended	39 5-39		No change
39 4-31		To be amended	39 5-40		No change
39 4-51		To be amended	39 5-41		No change
39 4-201		To be amended	39 5-42		No change
39 5-3		To be amended	39 5-43		No change
39 5-4		Repeal Governed by Rules 8 10-1 and 8 3-2(e)	39 5-44		To be amended
39 5-5		Repeal Governed by Rule 8 10-1 Form 11 also see State v Mowel, 13 N J Misc 302	39 5-45		No change
39 5-6		Repeal See Rule 8-10-10	39 5-46		No change
39 5-7		To be amended	39 5-47		No change
39 5-8		Repeal Governed by Rules 8 8-1(c) and 8-3-4	C 39 5-48		No change
39 5-9		To be amended	39 5-49		No change
39 5-10		Repeal Governed by Rule 8 7-1	R S 39 7-7		Amend
39 5-11		Amend	39 10-20		Amend
39 5-12		Repeal Unnecessary governed by Rule 2 11(e)	39 11-10		Amend
39 5-13		Repeal Unnecessary. See Rule 2 11	Title 40. Municipalities and Counties.		
39 5-14		Repeal Inconsistent with Rule 2 11(e) 2	R S 40 75-44		New sections drafted and designated 40 75-44, 44 1, 44 2, 44 3 and 44 4
39 5-15		Repeal Inconsistent with Rule 2 11(d)	R S 40 75-45		Power delegated is not properly judicial
39 5-16		Repeal Inconsistent with Rule 2-11(a) It may be necessary to amend Rule 2-11(a) because of diffi- culty in serving police officer	R S 40 76-7 to 40 76-11		Revised section 40 76-7 and reference therein to revised sections 40-75-44, 44 1, 44 2 and 44 3 is amply sufficient and will avoid repetition
39 5-17		Repeal Inconsistent with Rule 2:11(e)	R S 40-76-12		If new section 40 76-7 is adopted thus eliminating present sections 40 76-7, 8, 9, 10 and 11, new revised section to be designated 40.76-8 will act as sub- stitute

Title 3A ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
R S 40 87-32 to 40 87-45		Obsolete	Title 42. Partnerships and Partnership Associations.		
C 40 87-57 1		Obsolete	R S 42 3-30	.	To be repealed as dealing with procedure
R S 40 95-2 and 40 95-5 .		Substance of these sections covered in revised sections 40 97-5, 6, 7 and 8	42 4-3	.	To be repealed as dealing with procedure
R S 40 97-8		Covered in revised section 40 97-8	42 4-4	.	To be repealed as dealing with procedure
R S 40 99-2		Obsolete Substance of present section covered in 40 97-8 as revised	42 4-5	.	To be repealed as dealing with procedure
R S 40 99-3		Substance covered in 40 99-1 as revised	42 4-6	.	To be repealed as dealing with procedure
R S 40 99-4		Obsolete	42 4-10	.	To be repealed as dealing with procedure
R S 40 149-3.		Obsolete	42 4-11	.	To be repealed as dealing with procedure
R S 40 168-4		Obsolete	42 6-2	.	Borderline—Left untouched but quare?
C 40 175-22 1		Incorporated in 40 175-22 as revised	42 6-3	.	Borderline—Left untouched but quare?
40 175-22 2		Incorporated in 40 175-22 as revised	42 6-4	.	Borderline—Left untouched but quare?
40 175-22 3		Incorporated in 40 175-22 as revised	42 6-6	.	Borderline—Left untouched but quare?
R S 40 179-82		Incorporated in 40 179-82 as revised	Title 43. Pensions and Retirement and Unemployment Compensation.		
R S 40 184-20		Incorporated in 40 184-20 as revised	43 21-6	.	To be amended

Title 41. Oaths and Affidavits.

41 1-4	. . . .	To be included in Revised 41.1-4
41 2-1		Now in 41 2-1 conformed to new titles arising from 1947 constitution
41 2-4		Revised to eliminate provision for military service which is now embraced in a new section Substance is now in 41 2-4
41 2-5		Now in 41 2-5. See comment to 41 2-4
41 2-6		Revised in 41 2-6
41 2-7		Revised in 41 2-7
41 2-10		Revised in 41 2-10
41 2-11		Revised in 41 2-11
41 2-12		Revised in 41 2-12
41 2-13		Revised in 41 2-13
41 2-14		Repealed Substance included in 41 2-13
41 2-15	. . . .	Revised in 41 2-15 See comment to 41 2-4
41 2-16		Revised in 41 2-16
C 41 2A-1	. . . .	Revised in 41 2A-1
41 2A-2	. . . .	Repealed as obsolete
41 2A-3		Revised in 41 2A-3
41 2A-4	. . . .	Revised in 41 2A-4
41A-2A 6		New section This provision gathers together the several provisions for administering oaths of office and allegiance to persons in military service so as to provide a general rule applicable in all cases

43 21-14	. . . .	To be amended
C 43 21-50	. . . .	To be amended
43 21-51	. . . .	No change required

Title 44. Poor.

44 1-30 3	.	To be amended
R S 44 1-55	.	To be amended
44 1-86	.	To be amended
44 1-95	.	To be amended
44 1-121	.	To be amended
44 1-122	.	To be amended
44 1-123	.	To be amended
44 1-129	.	To be amended
44 1-130.	.	To be amended
44 1-131	.	To be amended
44 1-132	.	To be amended
44 1-141	.	To be amended
44 1-143	.	To be amended
44.1-144	.	Substitutes the word "attachment" for "sequestration" on theory that sequestration is superseded by Rule 3 72-6 This is so but R S 41 1-144 could not have meant a chancery writ of sequestration as the J & Dom Rel court did not have chancery powers To the extent that the dictionary meaning of "sequestration" differs from attachment, this proposed change may reflect a change in substance Compare proposed draft of R S. 44.4-105 as to which this comment is

DISTRIBUTION TABLE

All the statutes listed below are to be repealed		Comment or proposed new citation	All the statutes listed below are to be repealed		Comment or proposed new citation
		also applicable The action sanctioned by 44.4-105 is more than attachment	R S. 45.7-8....	Amended	
			45 7-22	Amended	
			45:7-23	Amended	
			45 7-24	To be repealed	See Rule
				7:12A	
			45 7-25	To be repealed	See Rule
				7:12A	
			45 7-26	Amended	
			45:7-27	Amended	
			C 45:8-31	Amended	
			R S 45:9-22	Amended	
			45 9-23	Amended	
			45.9-24	To be repealed	See Rule
				7:12A	
			45.9-25	To be repealed	See Rule
				7 12A	
			45.9-26	Amended	
			45 9-27	Amended	
			C 45:9-27 1	Amended	
			R S 45:10-10	Amended	
			45:10-11	Amended	
			45:10-12	To be repealed	See Rule
				7:12A	
			45:10-13	To be repealed	See Rule
				7:12A	
			45.10-14	Amended	
			45 10-15	Amended	
			C 45:11-32	Amended	
			45 11-36	Amended	
			45 11-38	Amended	
			45 11-39	Amended	
			45.11-40	To be repealed	See Rule
				7:12A	
			45.11-41	To be repealed	See Rule
				7:12A	
			45 11-42	Amended	
			45:11-43	Amended	
			R S. 45:12-14	Amended	
			45:12-20	Amended	
			45:12-21	Amended	
			45 12-22	To be repealed	See Rule
				7:12A	
			45:12-23	To be repealed	See Rule
				7:12A	
			45 12-24	Amended	
			45 12-25	Amended	
			45 14-12	Amended	
			C. 45:14-36 3	Amended	
			R S 45:14-38	Amended	
			45:14-39	Amended	
			45 15-18	Amended	
			45:15-23	Amended	
			45:15-24	Amended	
			45:15-25	To be repealed	See Rule
				7:12A	
			45.15-26	To be repealed	See Rule
				7:12A	
			45.15-27	Amended	
			45:15-28	Amended	
			C 45.15A-12	Amended	See Rule 7:12A
			R S 45.16-9	Amended	
Title 45. Professions and Occupations.			Title 46. Property.		
R.S. 45:3-8.....	Amended		46 14-4	Provides for proof of in-	
45:3-9.....	Amended			struments not acknowl-	
45:3-11.....	Amended			edged when witnesses dead	
45:3-12.....	Amended			&c. Changes court from	
45:3-13	To be repealed	See Rule			
	2 12A-10				
45:3-14	To be repealed	See Rules			
	7:12A-10 and 7:12A-12				
45:3-15	Amended				
C. 45.4-55	Amended				
R S. 44:4A-17	Amended				
45:4A-24	Amended				
45:4A-30	To be repealed.	See Rule			
	7:12A				
45:5-11	Amended				
45:5-12	Amended				
45:5-13	Blank.	See Rule 7:12A			
45:5-14	Blank	See Rule 7:12A			
45:5-15	Amended				
45:5-16	Amended				
C 45:5-17	Amended				
R S. 45 6-9.....	To be repealed.	Procedural			
45:6-25	Amended				
45 6-26	Amended				
45:6-27	To be repealed	See Rule			
	7:12A				
45:6-28	To be repealed.	See Rule			
	7:12A				
45 6-29	Amended				
C. 45:6-29 1	Amended				
45:6-46.....	Amended				

TITLE 4 TO TITLE 49

All the statutes listed below are to be repealed

Comment or proposed new citation

old circuit court to superior court. It is submitted this should be a county court matter not a superior court matter. It makes a material difference to rural counties where we do not have ready access to a superior court judge
46:14-5. Revised in 46:14-5

Title 48. Public Utilities.

48:2-35. Now in 48:2-35
48:2-41. Now in 48:2-41
48:2-42. Now in 48:2-42
48:2-43. Now in 48:2-43, and all of this section after the first sentence has been deleted, since the provisions for a thirty day time limit are invalid under 5 N J 534
48:2-44. Repeal Superseded by Rule 3:81-5
48:2-45. Repeal Superseded by Rule 3:81-5
48:2-46. Repeal See constitution, 1947, art. VI, sec. V, par. 4
48:2-47. Repeal. See constitution, 1947, art. VI, sec. V, par. 4
48:2-48. Repeal. Superseded by Rule 3:81-6
48:3-7.10. Now in 48:3-7.10. Conforms text to new court structure and permits use of Rule 3:79
48:3-7.11. No change indicated
48:3-28. Now in 48:3-28
48:4-28. Now in 48:4-28
48:4-35. Now in 48:4-35. Conforms paragraph f to new judicial structure
48:4-46. Now in 48:4-46 Conforms paragraph f to new judicial structure
48:6-19. Now in 48:6-19 Changes reference from justice of the supreme court to judge of the superior court. See const 1947, art. XI, sec IV, par. 10
48:8-8. Now in 48:8-8
48:8-17. Now in 48:8-17. Eliminates use of capias in actions for minor penalties
48:11-11. Now in 48:11-11
48:12-132. Now in 48:12-132. Conforms old petition on notice to practice under Rule 3:79
48:12-145. Now in 48:12-145. Conforms to new court structure
48:12-146. Now in 48:12-146 Conforms to new court structure

All the statutes listed below are to be repealed

Comment or proposed new citation

48:12-147. Now in 48:12-147 Conforms to new court structure
48:12-148. Now in 48:12-148. Conforms to new court structure
48:12-149. Now in 48:12-149 Conforms to new court structure
48:15-54. Now in 48:15-54 Conforms to new court structure
48:15-56. Now in 48:15-56 Conforms to new court structure

Title 49. Sales of Securities.

49:1-7. Now in 49:1-7. Conforms to new court structure See comment to 49:1-10
49:1-8. Now in 49:1-8 Conforms to new court structure
49:1-9. Now in 49:1-9. Procedural provisions removed
49:1-10. First paragraph repealed. Second paragraph transferred to 49:1-7
49:1-11. Now in 49:1-11. Conformed to new court structure. Combined with RS 49:1-13
49:1-12. Modified to conform to 49:1-11
49:1-13. Repeal Duplication of 49:1-11, except for one provision which is transferred to 49:1-11
49:1-14. Repeal Provides for entry of order to enjoin where defendant consents Unnecessary
49:1-15. Now in 49:1-15. Conformed to new court structure
49:1-16. Now in 49:1-16 Conformed to new court structure
49:1-17. Now in 49:1-17 Conforms to new procedure
49:1-18. No changes indicated
49:1-19. Now in 49:1-19 Conformed to new court structure
49:1-20. No changes indicated
49:1-21. Now in 49:1-21. Revised to eliminate procedure covered by court rule
49:1-22. Repeal Superseded by Rule 3:64
49:1-23. Now in 49:1-23 Conformed to new court structure
49:1-24. No changes indicated
49:1-25. No changes indicated
49:1-26. Now in 49:1-26 Conformed to new court structure
49:1-27. Now in 49:1-27 Conformed to new court structure
49:1-28. No changes indicated
49:1-29. No changes indicated
