SEC. 9. *And be it further enacted*, That all acts or parts of acts of the legislature of Maryland or of Congress, now in force, inconsistent with the provisions of this act, are hereby repealed, and this act shall take effect and be in force from and after its passage.

Repeal of inconsistent laws.

When act to take effect.

APPROVED, February 22, 1867.

CHAP. LXIV. — *An Act to amend the Law of the District of Columbia in Relation to Judicial Proceedings therein.*

Feb. 22, 1867.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no appeal shall be allowed from a judgment of a justice of the peace, unless the appellant, with sufficient surety or sureties, approved by the justice, enter into an undertaking to satisfy and pay all intervening damages and costs arising on the appeal.

Appeals from a judgment of a justice of the peace not to be allowed unless, &c.;

SEC. 2. *And be it further enacted*, That when such undertaking has been entered into, the justice shall immediately file the original papers, including a copy of his docket entries, in the office of the clerk of the supreme court of the District of Columbia; and thereupon, as soon as the appellant shall have made the deposit for costs required by law, or obtained leave from one of the justices, or from the court, to prosecute his appeal without a deposit, the clerk shall docket the cause, and shall issue a summons for the appellee to appear at the next trial term of the court, and thereafter the cause shall be proceeded with in the manner prescribed by the act of March one, eighteen hundred and twenty-three, entitled "An act to extend the jurisdiction of justices of the peace in the recovery of debts in the District of Columbia," except that the appellant need not file a petition as directed by said act.

when allowed, original papers to be filed in the office of clerk of the supreme court of the District.

Clerk to docket the cause when, &c. and to issue a summons to the appellee.

Subsequent proceedings. 1823, ch. 24. Vol. iii. p. 743.

SEC. 3. *And be it further enacted*, That if the appellant fails to prosecute his appeal, the appellee may, upon making the aforesaid deposit for costs, have the cause docketed, and move for affirmance of the justice's judgment, or he may have a trial of the cause upon its merits.

Proceedings if appellant fails to prosecute his appeal.

SEC. 4. *And be it further enacted*, That there shall be no supersedeas or stay of execution of the judgments of the supreme court of the District of Columbia, otherwise than by injunction, or upon proceedings in error to the Supreme Court of the United States.

Execution of the judgments of the supreme court of the District not to be stayed, &c. except, &c.

SEC. 5. *And be it further enacted*, That mutual debts between the parties to an action, or between the testator or intestate of both parties, or either party, may be set off against each other by plea in bar, whether the said debts be of the same or a different nature; and if either debt arose by reason of a penalty, the exact sum to be set off shall be stated in the plea.

Set-off of mutual debts.

SEC. 6. *And be it further enacted*, That the plea of set-off may be: "That the plaintiff, at the commencement of the suit, was, and still is, indebted to the defendant in the sum of —— dollars, for ——, as appears by the particulars of the said debt, hereunto annexed; and he is willing that the same may be set off against the plaintiff's demand." And upon the trial of an issue upon said plea, judgment shall be for the balance found due, whether to the plaintiff or defendant, with costs. Mutual judgments recovered in said *in said* court may be set off against each other, on motion of either party; and the court shall award execution for the balance found due against the party chargeable therewith.

Form of plea of set-off.

Judgment to be for balance found due.

Mutual judgments may be set off, and execution issue for the balance.

SEC. 7. *And be it further enacted*, That publication may be substituted for personal service of process upon any defendant who cannot be found, in suits for partition, divorce, by attachment, for the foreclosure of mortgages and deeds of trust, and for the enforcement of mechanics' liens and all other liens against real or personal property, and in all actions at law or in equity which have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.

Publication may be substituted for personal service of process, when, &c.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Publication not to be substituted for personal service until the issue of a summons and return thereon.

SEC. 8. *And be it further enacted*, That no order for the substitution of publication for personal service shall be made till a summons for the defendant shall have been issued and returned "not to be found." And when an order for publication shall be made, it shall be in the following or equivalent form:

Form of order of publication.

"In the Supreme Court of the District of Columbia, the —— day of ——, 18—.

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

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

Sales in cases where publication is substituted for personal service.

SEC. 9. *And be it further enacted*, That all sales duly made in cases in which publication is substituted for personal service of process shall be good and valid, and shall vest any purchaser with a perfect title.

Proceedings to enforce a lien. Decree in such cases.

SEC. 10. *And be it further enacted*, That the proceeding to enforce any lien shall be by bill or petition in equity, and the decree, besides subjecting the thing upon which the lien has attached to the satisfaction of the plaintiff's demand against the defendant, shall adjudge that the plaintiff recover his demand against the defendant, and that he may have execution thereof as at law.

Process how served in actions against foreign corporations.

SEC. 11. *And be it further enacted*, That in actions against foreign corporations doing business in the District of Columbia, all process may be served on the agent of such corporation or person conducting its business aforesaid, or in case he is absent and cannot be found, by leaving a copy thereof at the principal place of business in the District, and such service shall be effectual to bring the corporation before the court.

Right of landlord to seize on the personal chattels of tenant for rent in arrear abolished. Tacit lien given; when to commence, and how long to continue; how may be enforced.

SEC. 12. *And be it further enacted*, That the power claimed and exercised as of common right by every landlord, of seizing, by his own authority, the personal chattels of his tenant for rent arrear, is hereby abolished, and, instead of it, the landlord shall have a tacit lien upon such of the tenant's personal chattels, upon the premises, as are subject to execution for debt, to commence with the tenancy and continue for three months after the rent is due, and until the termination of any action for such rent brought within said three months. And this lien may be enforced, —

1. By attachment, to be issued upon affidavit that the rent is due and unpaid; or if not due, that the defendant is about to remove or sell all or some of said chattels; or,

2. By judgment against the tenant and execution, to be levied on said chattels or any of them, in whosoever hands they may be found; or,

3. By action against any purchaser of any of said chattels, with notice of the lien, in which action the plaintiff may have judgment for the value of the chattels purchased by the defendant, but not exceeding the rent arrear and damages.

Form of declaration in replevin.

SEC. 13. *And be it further enacted*, That the declaration in replevin shall be in the following or equivalent form: "The plaintiff sues the defendant for (wrongfully taking and detaining,) (unjustly detaining) his, said plaintiff's goods and chattels, to wit: (describe them) of the value of $—. And the plaintiff claims that the same be taken from the defendant and delivered to him; or if they are eloigned, that he may have judgment of their said value, and all mesne profits and damages, which he estimates at $—, besides costs." And at the time of filing the declaration, the plaintiff, his agent or attorney, shall file an affidavit, sworn to before the clerk, stating, —

Plaintiff to file an affidavit with the declaration. Affidavit to state what.

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

2. That the defendant has seized and detains, or detains the same.

3. That said chattels were not subject to such seizure or detention, and were not taken upon any writ of replevin. And he shall, at the same time, enter into an undertaking with surety, approved by the clerk, to abide by and perform the judgment of the court in the premises.

Plaintiff in replevin suits to give security to abide by, &c. the judgment.

Practice in replevin cases.

SEC. 14. *And be it further enacted*, That if the officer's return of the writ of replevin be, that he has served the defendant with copies of the declaration, notice to plead and summons, but that he could not get possession of the goods and chattels sued for, the plaintiff may prosecute the action for the value of the same and damages for detention; or he may renew the writ in order to get possession of the goods and chattels themselves. If the officer's return be, that he has taken possession of the goods and chattels sued for, but that the defendant is not to be found, the court may order that the defendant appear to the action by some fixed day; and of this order the plaintiff shall cause notice to be given by publication in some newspaper of the District at least three times, the first of which shall be at least twenty days before the day fixed for the defendant's appearance; and if the defendant fail to appear, the court may proceed as in case of default after personal service.

Appearance and plea of defendant.

SEC. 15. *And be it further enacted*, That if the defendant appear, he may plead not guilty, in which case all special matters of defence may be given in evidence, or he may plead specially.

Plaintiff's damages to be ascertained, when and how.

SEC. 16. *And be it further enacted*, That, whether the defendant plead, and the issue thereon joined is found against him; or his plea is held bad on demurrer; or he make default after personal service, or after publication, the plaintiff's damages shall be ascertained by the jury trying the issue, where one is joined, or by a jury of inquest, where there is no issue of fact; and those damages shall be the full value of the goods, if eloigned by the defendant, including, in every case, the loss sustained by the plaintiff by reason of the detention; and judgment shall pass for the plaintiff accordingly.

Measure of damages.

Judgment.

Form of judgment if for defendant.

SEC. 17. *And be it further enacted*, That if the issue be found for the defendant, or the plaintiff dismiss or fail to prosecute his suit, the judgment shall be that the goods, if delivered to the plaintiff, be returned to the defendant with damages, or on failure, that the defendant recover against the plaintiff and his surety the damages by him sustained, to be assessed by the jury trying the issue; or, where the plaintiff dismisses or fails to prosecute his suit, by the jury of inquest.

Damages when the defendant has eloigned the things sued for.

Judgment in such cases.

SEC. 18. *And be it further enacted*, That if the defendant has eloigned the things sued for, the court may instruct the jury, if they find for the plaintiff, to assess such damages as may compel the defendant to return the things; and the judgment shall be that the plaintiff recover against the defendant the value of the goods as found, to be discharged by the return of the things, with damages for detention, which the jury shall also assess.

Judgment by default in suits on open accounts verified by affidavit, &c.

Practice as to such affidavits.

SEC. 19. *And be it further enacted*, That where a suit is brought upon an open account, verified by the plaintiff's or his agent's affidavit, that the amount claimed by the plaintiff is justly payable by the defendant to the plaintiff, and the defendant fails to defend the suit, the plaintiff may have judgment final by default for said amount, with interest from the day specified in the declaration, without an inquiry of damages. If the affidavit be made before an officer, of whose authority to administer oaths the court cannot take notice, his authority must be verified by the certificate under official seal, if he have one, of the officer having authority to give such certificate.

Proceedings against two or more joint or several obligors, promisors, &c.

SEC. 20. *And be it further enacted*, That where money is payable by two or more persons jointly or severally, as by joint obligors, covenantors, makers, drawers, or indorsers, one action may be sustained and judgment recovered against all or any of said parties, by whom the money is pay-

able, at the option of the plaintiff. But an action against one or some of the parties by whom the money is payable may, while the litigation therein continues, be pleaded in bar of another action against another or others of said parties.

Effect of sales under decrees in equity upon the right, &c. of former owner;

and of decree where registered.

Particular forms of conveyance.

SEC. 21. *And be it further enacted*, That in case of the sale of things, real or personal, under a decree in equity, the decree confirming the sale shall divest the right, title, or interest sold out of the former owner, party to the suit, and vest it in the purchaser, without any conveyance by the officer or agent of the court conducting the sale. And of this transfer of title the decree shall be notice to all the world, when a copy thereof shall be registered among the land records of the District. Nevertheless, the court may order its officer or agent aforesaid to make a conveyance, if that mode be deemed preferable, in particular cases.

Plaintiff not to recover costs when amount of verdict is less than, &c.

SEC. 22. *And be it further enacted*, That if the declaration state a cause of action of which the court has jurisdiction, but the verdict finds the money payable by the defendant to the plaintiff to be less than the lowest sum of which the court has jurisdiction, the plaintiff shall have judgment for the amount found due to him from the defendant, but without costs.

Repeal of inconsistent laws.

SEC. 23. *And be it further enacted*, That all laws and parts of laws in conflict with these provisions are repealed.

APPROVED, February 22, 1867.

Feb. 22, 1867.

CHAP. LXV. — *An Act providing for the Punishment of certain Crimes therein named in the District of Columbia, and for other Purposes.*

Penalty for larceny of money or goods and chattels of the value of $35, or more;

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person shall steal any money or other personal goods or chattels, the property of another, of the value of thirty-five dollars or upward, the person so offending shall be deemed guilty of larceny, and, upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor not more than three years, nor less than one year.

for larceny or malicious destruction of notes, bank bills, &c. of said value, with knowledge, &c.;

SEC. 2. *And be it further enacted*, That if any person shall steal, or maliciously and feloniously destroy any bank bill, promissory note or notes, bill of exchange, order, receipt, warrant, draft, check, or bond, given for the payment of money, or receipt acknowledging the receipt of money or other property, or any government bonds or other securities, or stamps, United States treasury notes, or any public stocks, of the value of thirty-five dollars or upward, knowing the same to be such, any such person shall be deemed guilty of a misdemeanor, and on conviction thereof shall be imprisoned in the penitentiary, and kept at hard labor not more than three years, nor less than one year.

for buying or receiving goods, notes, &c. knowing them to be stolen;

SEC. 3. *And be it further enacted*, That if any person shall receive or buy any goods, or chattels, or bank bill or bills, or promissory note or notes, bill of exchange, order, receipt, draft, warrant, check, or bond, given for the payment of money, or any government bond, United States treasury note or notes, or other securities, or government stamps, or stocks, of the value of thirty-five dollars, or upwards, which have been stolen, knowing the same to be stolen, with intent to defraud the owners thereof, every person so offending shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor, not more than three [years,] nor less than one year.

for the larceny, &c. of money, goods, &c. or the malicious destruction of notes, &c. of less value than $35.

SEC. 4. *And be it further enacted*, That if any person shall steal any money, or other goods and chattels of any kind whatever, of less value than thirty-five dollars, the property of another, or shall steal or maliciously destroy any bank bill, promissory note, bill of exchange, order, warrant, draft, check, or bond, or any accountable receipt for money, given for the payment or acknowledgment of any sum under thirty-five dollars, or any United States treasury note or government stamps of less value