

concerning the mint," approved March the third, one thousand eight hundred and one, be, and the same hereby is, revived and continued in force and operation, until otherwise provided by law.

For purpose of securing a due conformity, the brass troy weight procured in 1827 shall be the standard troy pound.
1792, ch. 16.

SEC. 2. *And be it further enacted,* That, for the purpose of securing a due conformity in weight of the coins of the United States, to the provisions of the ninth section of the act, passed the second of April, one thousand seven hundred and ninety-two, entitled "An act establishing a mint, and regulating the coins of the United States," the brass troy pound weight procured by the minister of the United States at London, in the year one thousand eight hundred and twenty-seven, for the use of the mint, and now in the custody of the director thereof, shall be the standard troy pound of the mint of the United States, conformably to which the coinage thereof shall be regulated.

A series of weights corresponding to the aforesaid troy pound weight, to be procured.

SEC. 3. *And be it further enacted,* That it shall be the duty of the director of the mint to procure, and safely to keep a series of standard weights, corresponding to the aforesaid troy pound, consisting of an one pound weight, and the requisite subdivisions and multiples thereof, from the hundredth part of a grain to twenty-five pounds; and that the troy weights ordinarily employed in the transactions of the mint, shall be regulated according to the above standards, at least once in every year, under his inspection; and their accuracy tested annually in the presence of the assay commissioners, on the day of the annual assay.

When silver bullion is found to require the operation of the test.

SEC. 4. *And be it further enacted,* That, when silver bullion, brought to the mint for coinage, is found to require the operation of the test, the expense of the materials employed in the process, together with a reasonable allowance for the wastage necessarily arising therefrom, to be determined by the melter and refiner of the mint, with the approbation of the director, shall be retained from such deposit, and accounted for by the treasurer of the mint to the treasury of the United States.

Silver bullion found to contain a proportion of gold.
Proviso.

SEC. 5. *And be it further enacted,* That, when silver bullion, brought to the mint for coinage, shall be found to contain a proportion of gold, the separation thereof shall be effected at the expense of the party interested therein: *Provided, nevertheless,* That, when the proportion of gold is such that it cannot be separated advantageously, it shall be lawful, with the consent of the owner, or, in his absence, at the discretion of the director, to coin the same as an ordinary deposit of silver.

Director of the mint may employ the requisite number of clerks.

SEC. 6. *And be it further enacted,* That the director of the mint may employ the requisite number of clerks, at a compensation not exceeding in the whole the sum of seventeen hundred dollars, and such number of workmen and assistants as the business of the mint shall, from time to time, require.

Director of the mint to receive and cause to be assayed bullion not intended for coinage, &c.

SEC. 7. *And be it further enacted,* That it shall be lawful for the director of the mint to receive, and cause to be assayed, bullion not intended for coinage, and to cause certificates to be given of the fineness thereof by such officer as he shall designate for that purpose, at such rates of charge, to be paid by the owner of said bullion, and under such regulations, as the said director may, from time to time, establish.

Act of Jan. 18, 1837, ch. 3, sec. 14.

APPROVED, May 19, 1828.

STATUTE I.

May 19, 1828.

CHAP. LXVIII.—*An Act further to regulate processes in the courts of the United States. (a)*

Act of March 3, 1821, ch. 51.
Forms of

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the forms of mesne pro-

(a) In addition to the notes of the decisions of the courts of the United States on the subject of process and proceeding in vol. i. 93, the following cases are referred to:

The legislature of a state cannot suspend process in the courts of the United States, as to its citizens. *Babcock v. Weston*, 1 Gallis. C. C. R. 168.

cess, except the style, and the forms and modes of proceeding in suits in the courts of the United States, held in those states admitted into the Union since the twenty-ninth day of September, in the year seventeen hundred and eighty-nine, in those of common law, shall be the same in mesne process, except the style, and the forms and modes of pro-

It is not a contempt of court to serve a person with a summons, while attending at the place where the court is held, as a party in a cause, or as a witness. It is a contempt of court to serve process, either of summons or capias, in the actual or constructive presence of the court. *Blight's Ex'rs v. Ashley*, 1 Peters' C. C. R. 41.

Attachments for the non-attendance of a witness, on a subpoena, must be served by the marshal of the court; although the persons against whom the process is issued, reside in a distant county. *United States v. Montgomery*, circuit court of the United States, 2 Dall. 33.

An attachment is the usual process to bring a party into court, where he has not made a true return; and if he is present in court, no such process is necessary; but the court may pass an order directing him, immediately, to answer interrogatories. *United States v. Greene*, 3 Mason's C. C. R. 482.

Attachments may issue out of the admiralty courts of the United States, against the goods or debts of an absent person, so as to make him a party to the suit. *Bouysson et al. v. Miller et al.*, *Bee's Adm. Decis.* 186.

The admiralty may issue process of attachment to compel an appearance in cases of maritime torts, as well as in cases of contract. *Manro v. Almeida*, 10 Wheat. 473; 6 Cond. Rep. 190.

An admiralty court has jurisdiction to proceed by attachment in rem for a tort. *The Candalero*, *Bee's Adm. Decis.* 60.

The process of attachment may issue whenever the defendant has concealed himself, or has absconded from the country, and the goods to be attached are within the jurisdiction of the court of admiralty. It may issue against his goods and chattels, and against his credits and effects, in the hands of third persons. *Manro v. Almeida*, 10 Wheat. 473; 6 Cond. Rep. 190.

It seems that an attachment cannot issue without an express order of the judge, but it may be issued simultaneously with the monition; and where the attachment issued in this manner, and in pursuance of the prayer of the libel, the Supreme Court will presume that it was regularly issued. *Ibid.*

The act for regulating processes in the courts of the United States, provides that the forms and modes of proceeding in courts of equity, and in those of admiralty and maritime jurisdiction, shall be according to the principles, rules and usages which belong to courts of equity, and to courts of admiralty, respectively, as contradistinguished from courts of common law, subject, however, to alterations by the courts, &c. This act has been generally understood to adopt the principles, rules and usages of the court of chancery of England. *Hinde v. Vattier*, 5 Peters, 398.

Process of foreign attachment cannot be properly issued by the circuit courts of the United States, in cases where the defendant is domiciled abroad, or not found within the district in which the process issues, so that it cannot be served upon him. *Toland v. Sprague*, 12 Peters, 300.

By the general provisions of the laws of the United States: 1. The circuit courts can issue no process beyond the limits of their districts. 2. Independently of positive legislation, the process can only be served upon persons within the same districts. 3. The acts of Congress adopting the state process, adopt the form and modes of service only, so far as the persons are rightfully within the reach of such process; and did not intend to enlarge the sphere of the jurisdiction of the circuit courts. 4. The right to attach property to compel the appearance of persons, can properly be used only in cases in which such persons are amenable to the process of the circuit court, in personam; that is, where they are inhabitants, or found within the United States; and not where they are aliens, or citizens resident abroad, at the commencement of the suit, and have no inhabitancy here. *Ibid.*

In the case of a person being amenable to process, in personam, an attachment against his property cannot be issued against him, except as a part of, or together with process to be served upon his person. *Ibid.*

The circuit and district courts of the United States cannot, either in suits at common law or equity, send their process into another district, except where specially authorized so to do, by some act of Congress. *Ex parte Graham*, 3 Wash. C. C. R. 456.

The marshal may have an attachment to enforce the payment of his fees of office, against suitors in the court. *Anonymous*, 2 Gallis. C. C. R. 101.

The court will not dictate to the marshal, what return he shall make to process in his hands. He must make his return at his peril, and any person injured by it, may have his legal remedy for such return. *Wortman v. Conyngham*, Peters' C. C. R. 241.

Congress has, by the constitution, exclusive authority to regulate proceedings in the courts of the United States; and the states have no authority to control those proceedings; except so far as the state process acts are adopted by Congress, or by the courts of the United States, under the authority of Congress. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

The 14th section of the judiciary act of 1789, ch. 20, authorizes the courts of the United States to issue writs of execution, as well as other writs. *Ibid.*

The 34th section of the judiciary act of 1789, ch. 20, does not apply to the process and practice of the courts. It merely furnishes a rule of decision, and is not intended to regulate the remedy. *Ibid.*

The process act of 1792, ch. 137, is the law which regulates executions issuing from the courts of the United States; and it adopts the practice of the supreme courts of the states, in 1789, as the rule for governing proceedings on such executions, subject to such alterations as the courts of the United States may make, but not subject to the alterations which have since taken place in the state laws and practice. *Ibid.*

The statutes of Kentucky concerning executions, which require the plaintiff to endorse on the execution, that bank notes of the Bank of Kentucky, or notes of the Bank of the Commonwealth of Kentucky, will be received in payment, and on his refusal, authorize the defendant to give a replevin bond for the debt, payable in two years, are not applicable to executions issued on judgments rendered by the courts of the United States. *Ibid.*

ceeding in suits
in courts of
United States
admitted into
the Union

each of the said states, respectively, as are now used in the highest court, of original and general jurisdiction of the same, in proceedings in equity, according to the principles, rules, and usages, which belong to courts of equity, and in those of admiralty and maritime jurisdiction, according to

The laws of the United States authorize the courts of the Union so to alter the form of the process of execution used in the supreme courts of the states in 1789, as to subject to execution, issuing out of the federal courts, lands and other property not thus subject by the state laws in force at that time. *Bank of the United States v. Halstead*, 10 Wheat. 51; 6 Cond. Rep. 22.

A subpoena duces tecum may issue to the President of the United States. 1 Burr's Trial, 183.

A party cannot be arrested in Pennsylvania, on an attachment from the circuit court in Rhode Island, for contempt, in not appearing in that court after a monition served upon him in Pennsylvania, to answer in a prize cause depending in the court in Rhode Island. *Ex parte Graham*, 3 Wash. C. C. R. 456.

A writ of error does not lie to an order of the court below to stay the proceedings finally, upon suggestion of the attorney of the United States, in a case to which the United States are not parties; but the court will award a mandamus nisi, in the nature of a procedendo. *Livingston v. Dorgenois*, 7 Cranch, 577; 2 Cond. Rep. 618.

The marshal of the District of Columbia is bound to serve a subpoena in chancery, as soon as he reasonably can; and he will, in case of neglect, be answerable to the plaintiff, who has, in consequence of such neglect, sustained any loss. *Kennedy v. Brent*, 6 Cranch, 187; 2 Cond. Rep. 345.

On a *capias*, in *assumpsit* against three, and one arrested, who gives bail, and non est inventus as to the others, if the party files his declaration and proceeds against the one arrested, he cannot afterwards bring in the others by alias *capias*, and make them parties to the suit. *United States v. Parker*, 2 Dall. 373.

An alias *capias* must be tested, as of the term to which the original writ was returned. *Ibid.*

A term cannot intervene between the teste and return of a writ of error. *Hamilton v. Moore*, 3 Dall. 371; 1 Cond. Rep. 168.

If the defendant below intermarries after the judgment, and before the service of the writ of error, the service of the citation upon the husband will be sufficient. *Fairfax's Ex'rs v. Fairfax*, 5 Cranch, 19; 2 Cond. Rep. 178.

There is no act of Congress which authorizes a circuit court to issue a compulsory process to the district court for the removal of a cause from that jurisdiction before a final judgment or decree is pronounced. If a *certiorari* should issue in such a case, the district court may and ought to refuse obedience to the writ: and after the cause is thus removed, either party may move for a *procedendo*, or pursue the cause in the district court, in like manner as if the record had not been removed. But, if instead of taking advantage of this irregularity, the defendant enter his appearance in the circuit court, take defence and plead to issue, it is too late after verdict to object to the irregularity. The cause will be considered as an original one in the circuit court, made so by consent of parties, even though no declaration *de novo* should be filed in the circuit court. *Patterson v. The United States*, 2 Wheat. 221; 4 Cond. Rep. 98.

Whenever, by the state laws in force in 1789, a *capias* might issue from a state court, the acts of 1789 and 1792, extending, in terms, to that species of writ, must be understood to have adopted its use permanently in the federal courts. *United States v. January*, 10 Wheat. 66. In a note.

At an early period after the organization of the federal courts, the rules of practice in force in the state courts, which were similar to the English practice, were adopted by the judges of the circuit court. A subsequent change in the practice of the state courts, will not authorize a departure from the rules adopted in the circuit court. *Anonymous, Peters' C. C. R. 1.*

Whenever, by the laws of the United States, a defendant is to be arrested, the process of arrest employed in the state, shall be pursued. 2 Burr's Trial, 481.

Upon executing a writ of inquiry, in Virginia, in an action of *assumpsit* upon a promissory note, it is necessary to produce a note, corresponding with that stated in the declaration; but it is not necessary to prove the note. *Sheehy v. Mandeville*, 7 Cranch, 208; 2 Cond. Rep. 476.

A party charged with a crime, even before indictment found, may have compulsory process for his witnesses. But his omitting to avail himself of this right is not such negligence as will deprive him of the benefit of having his cause postponed, if his witnesses be absent; but it will justify the court in imposing terms on him. *United States v. Moore*, Wallace's C. C. R. 23.

The process act of Congress, of 1828, was passed shortly after the decision of the Supreme Court of the United States, in the case of *Wayman v. Southard*, and the *Bank of the United States v. Halsted*, and was intended as a legislative sanction of the opinions of the court in those cases. The power given to the courts of the United States, by this act, to make rules and regulations on final process, so as to conform the same to the laws of the states on the same subject, extends to future legislation; and as well to the modes of proceedings on executions, as to the forms of writs. *Ross & King v. Duval et al.*, 13 Peters, 45.

All proceedings for attachments are on the civil side of the courts, and are to be entitled with the names of the parties, until an attachment issues; after which they are on the criminal side. *United States v. Wayne*, Wallace's C. C. R. 134.

The courts of chancery of the United States will, under circumstances, order a commission of rebellion, to be returnable forthwith. *Ibid.*

The judiciary act of 1789, ch. 20, does not contemplate compulsive process against any person in any district, unless he be an inhabitant of, or found within, the same district at the time of serving the writ. *Picquet v. Swan*, 5 Mason's C. C. R. 35.

The act of Massachusetts of 1797, ch. 50, prescribing the modes of serving process, does not apply to a case where the defendant has been an inhabitant, but at the time of the suit brought has his actual domicile in another state or country. *Ibid.*

Under the statute of Massachusetts of 1823, ch. 142, giving relief against fraud to secure attaching creditors, it is not necessary that the second attachment should be returnable to the same term of the

the principles, rules, and usages, which belong to courts of admiralty, as contradistinguished from courts of common law, except so far as may have been otherwise provided for by acts of Congress; subject, however, to such alterations and additions, as the said courts of the United States respectively shall, in their discretion, deem expedient, or to such regulations as the Supreme Court of the United States shall think proper, from time to time, by rules, to prescribe to any circuit or district court concerning the same.

SEC. 2. *And be it further enacted*, That, in any one of the United States, where judgments are a lien upon the property of the defendant, and where, by the laws of such state, defendants are entitled in the courts thereof, to an imparlance of one term or more, defendants, in actions in the courts of the United States, holden in such state, shall be entitled to an imparlance of one term.

SEC. 3. *And be it further enacted*, That writs of execution and other final process issued on judgments and decrees, rendered in any of the courts of the United States, and the proceedings thereupon shall be the same, except their style, in each state, respectively, as are now used in the courts of such state, saving to the courts of the United States in those states, in which there are not courts of equity, with the ordinary equity jurisdiction, the power of prescribing the mode of executing their decrees in equity by rules of court: *Provided, however*, That it shall be in the power of the courts, if they see fit in their discretion, by rules of court, so far to alter final process in said courts as to conform the same to any change which may be adopted by the legislatures of the respective states for the state courts.

since 29th Sept. 1829.

Subject, however, to such alterations, &c.

Where judgments are a lien upon the property of the defendant.

When writs of execution and other final process issued on judgments, &c., rendered in any of the courts of the United States, &c. Proviso.

court as the first attachment. Query, If the plaintiff must, in all cases under that act, sign and make oath to his petition to be admitted to defend against the first attachment, or if he is abroad, it may be done by his agent. *Lodge v. Lodge*, 5 Mason's C. C. R. 407.

Pennsylvania. Levy and condemnation, under an execution, keep a judgment alive, and preserve the lien without a scire facias. *United States v. The Mechanics' Bank, Gilpin's D. C. R. 54*.

Where there is a scire facias to revive a judgment, the defendant cannot avail himself of matters of defence which occurred previous to the original judgment. *United States v. Thompson, Gilpin's D. C. R. 622*.

Laws which relate to practice, process, or modes of proceeding before or after judgment, are exceptions to the 34th section of the judiciary act of 1789, as Congress have legislated on the subject. The Supreme Court of the United States have established the distinction to be this: State laws, which furnish the court a rule for forming a judgment, are binding on the federal courts, not laws for carrying that judgment into execution; that is governed by the acts of Congress, and the rules of practice adopted in pursuance thereto. *Thompson v. Phillips, Baldwin's C. C. R. 274*.

The act of the legislature of Ohio, of February, 1820, relative to proceedings against parties to promissory notes, by which all the parties to a note might be proceeded against in one suit, was a very wise and benevolent law, and its salutary effects produced its immediate adoption into the practice of the courts of the United States, and the suits have, in many instances, been prosecuted under it. *Fallerton v. The Bank of the United States*, 1 Peters, 604.

Although the act of the legislature of Ohio, regulating the mode of proceeding in actions on promissory notes, was passed after the making of the note upon which this action was brought, yet the circuit court of the United States for the district of Ohio, having incorporated the action under that statute, with all its incidents, into its course of practice, and having full power by law to adopt it, there does not appear any legal objection to its doing so, in the prosecution of the system under which it has always acted. *Yeaton v. Lenox*, 8 Peters, 123.

The process act of 1828 expressly adopts the mesne process, and modes of proceeding in suits at common law, then existing in the highest state court, under the state laws; which of course included all the regulations of the state laws as to bail, and exemptions of the party from arrest and imprisonment. In regard, also, to writs of execution, and other final process, and "the proceedings thereupon;" it adopts an equally comprehensive language, and declares they shall be the same as were then used in the courts of the state. *Beers v. Haughton*, 9 Peters, 329.

The circuit court of each district, sit within and for that district, and are bounded by its local limits. Whatever may be the extent of the jurisdiction of the circuit court over the subject matter of suits, in respect to persons and property, it can only be exercised within the limits of the district. Congress might have authorized civil process from any circuit court to have run into any state of the Union. It has not done so. It has not, in terms, authorized any civil process to run into any other district; with the single exception of subpoenas to witnesses within a limited distance. In regard to final process, there are two cases, and only two, in which writs of execution can now by law be served in any other district than that in which the judgment was rendered; one in favour of private persons in another district of the same state; and the other in favour of the United States, in any part of the United States. *Toland v. Sprague*, 12 Peters, 300.

Nothing in this act to be construed to extend to any court, &c.

SEC. 4. *And be it further enacted*, That nothing in this act contained shall be construed to extend to any court of the United States now established, or which may hereafter be established, in the state of Louisiana. (a)

APPROVED, May 19, 1828.

STATUTE I.

May 23, 1828.

CHAP. LXIX.—*An Act to authorize the building of lighthouses, and for other purposes.*

Secretary of the Treasury empowered to provide for building lighthouses, &c.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury be, and he is hereby, empowered to provide, by contract, for building lighthouses and light vessels, and erecting beacons, and placing buoys, on the following sites and shoals, to wit :

At Dice's Head. On Nobsque point.

In the state of Maine, a lighthouse at Dice's Head.

On Nayat point, &c.

In the state of Massachusetts, a lighthouse on Nobsque point; one on the Point of Flats, at the entrance of Edgartown harbour; a lighthouse on Dumpling rock, south of the mouth of Aponeganset river.

In the state of Rhode Island, a lighthouse on Nayat point; and two pyramids or spindles, to wit: one on a reef of rocks, under water, opposite to Pawtuxet, and one on a reef of rocks, opposite the Punham Rock, in the northern part of Narraganset bay.

Beacon light on Spindle Rock.

In the state of Connecticut, a beacon light on or near the Spindle Rock, at the mouth of Black Rock harbour.

Two lighthouses north of Kinder Hook, &c.

In the state of New York, two small lighthouses, to wit: one on the flats, two miles north of Kinder Hook, upper landing, called the Drowned Lands, and one on the point of the island on the west side of the channel, opposite the lower landing. A lighthouse at a proper site, at or near Portland, on Lake Erie.

Two lighthouses on Little Watt's Island, &c.

In the state of Maryland, two lighthouses; one on Little Watt's Island, at the south-eastern extremity of Tangier Sound; and the other on Clay Island, at the northernmost extremity of the same sound; and a beacon light, or a small lighthouse on Point Lookout, in the Chesapeake bay.

Lighthouse on Smith's point.

In the state of Virginia, a lighthouse on Smith's point, at the mouth of the Potomac, in the Chesapeake bay.

Light vessel to be substituted, &c.

In the state of North Carolina, a light vessel, to be substituted for the lighthouse heretofore directed to be built at the Point of Marsh, at the mouth of Neuse river.

Beacon lighthouse on Pamptico Sound, &c.

A beacon light, or small lighthouse, at a proper site on Pamptico point; and one at the south entrance of Roanoake marshes.

Lighthouse in Mobile bay, &c.

In the state of Alabama, a lighthouse at or near Choctaw point, in Mobile bay; and an iron spindle on Sand island, on the outer bar of Mobile bay.

Two lighthouses, one at Otter creek point, &c.

In the territory of Michigan, two lighthouses; one at Otter creek point, at the head of Lake Erie, and the other on the Island of Bois Blanc, near Michilimacinae.

Lighthouse, St. John's river. Sums appropriated to be paid from the treasury.

In the territory of Florida, a lighthouse at the mouth of St. John's river.

SEC. 2. *And be it further enacted*, That the following sums of money be appropriated and paid out of any moneys in the treasury not otherwise appropriated, for the purpose of carrying the provisions of this act into effect, viz :

Lighthouse on Dice's Head.

For building a lighthouse on Dice's Head, five thousand dollars.

Lighthouse on Nobsque Rock, &c.

For the lighthouse on Nobsque point, three thousand dollars; and for the pier and lighthouse at the entrance of Edgartown harbour, five thousand five hundred dollars.

Lighthouse, Dumpling rock.

For a lighthouse on Dumpling rock, four thousand dollars.

(a) See an act to regulate the mode of practice in the courts of the United States in Louisiana, May 26, 1824, ch. 181, and notes to that act.