

THE
PUBLIC AND GENERAL
STATUTE LAWS
OF THE
STATE OF ILLINOIS:

CONTAINING

ALL THE LAWS PUBLISHED IN THE "REVISED STATUTES" OF 1833, EXCEPT SUCH AS
ARE REPEALED,—TOGETHER WITH ALL THE ACTS OF A GENERAL AND
PUBLIC NATURE, PASSED BY THE NINTH GENERAL
ASSEMBLY, AT THEIR

FIRST SESSION,

COMMENCING

DECEMBER 1, 1834, AND ENDING FEBRUARY 13, 1835;

AND AT THEIR

SECOND SESSION,

COMMENCING

DECEMBER 7, 1835, AND ENDING JANUARY 18, 1836;

AND THOSE PASSED BY THE

TENTH GENERAL ASSEMBLY,

AT THEIR SESSION

COMMENCING DECEMBER 5, 1836, AND ENDING MARCH 6, 1837;

AND AT THEIR

SPECIAL SESSION,

COMMENCING

JULY 10, AND ENDING JULY 22, 1837; WHICH ARE NOT REPEALED:

AND ALSO THE

MILITIA LAW.

COMPILED AND

ARRANGED ALPHABETICALLY,

WITH

OCCASIONAL REFERENCES.

CHICAGO:
PUBLISHED BY STEPHEN F. GALE.
1839.

P R E F A C E .

THIS edition of the Statutes of the State of Illinois, has been compiled from the Laws published under the direction of the General Assembly ; and, it is believed, contains all the laws of a public nature now in force in this State, except those enumerated in the second section of the Act entitled "*An Act declaring what laws of a general nature shall be published with the acts of a general nature of this session,*" passed March 2, 1833. As the last named acts are not contained in the "*Revised Laws,*" the compiler has not deemed it necessary to insert them in this edition. They are voluminous, and would swell the size of the volume, and consequently increase the price of the book, without, it is believed, conferring a corresponding benefit upon the purchaser. They relate mostly to the boundaries and organization of counties, the old State Bank, and such other matters as are not of general application, though technically coming under the description of public acts. In excluding them the compiler has followed the example of the Legislature.

The acts creating the Municipal Courts of the cities of Alton and Chicago, and the acts in relation thereto, are not inserted, for the reason that it would be difficult to publish so much of said acts as relates to the courts without inserting the charters of the cities. For a similar reason, the acts increasing the salaries of the several Judges and other officers, are not to be found in this volume.

It will be perceived, that there is a great want of uniformity in the punctuation of the laws. The same remark, to a less extent, is applicable to their orthography. It has been the endeavor of the compiler to make the laws contained in this volume, *verbatim et literatim* copies of the originals published by the public printer, so far as the latter are unrepealed.

The highest judicial tribunal of one of the proudest states in the Union, having founded its decision, in a certain case which came under its consideration, upon the punctuation of a statute, it would be highly censurable for a publisher to alter the punctuation of a law book, even for the purpose of correcting what might seem a palpable error, occasioned by a *lapsus pennæ*.

One of Cromwell's judges is reported to have said that it was "impossible to spell correctly with Irish goose quills." Whether it was from a

similar cause, that the errors contained in this volume, originated, it is not necessary to determine.

Every thing which relates to the literature of the Statutes, has been left untouched. If our laws are deficient in this particular, we have but followed in the footsteps of our elder sisters.

The Militia Law of 1833, was not published in the "*Revised Laws.*" It was printed in a separate book. It is inserted in this volume.

The "*Revised Laws*" are not within the reach of the public. The edition printed by the Legislature, has been long since exhausted ; and very many of the officers in the northern counties, are unsupplied, and find it impossible to obtain a copy of them. Private individuals cannot procure them. Under these circumstances, the publisher came to the determination to publish an edition of the statutes, containing all the public acts now in force, and omitting all such as have been repealed.

The subjects legislated upon in the different acts, are frequently found in inappropriate places. For instance : The act of Jan. 31, 1827, in relation to *conveyances*, requires that all deeds, &c. shall be recorded within twelve months. This act is amended by limiting the time to six months, by the act of January 22, 1829. Both these acts are found under the appropriate title of *conveyances*. But under the head of "*State Recorder*" is found "*An act abolishing the office of State Recorder,*" the fifth section of which requires after the first day of August, 1833, all deeds, &c. to be filed for record before they can take effect as to creditors and subsequent purchasers,—thereby repealing the beforementioned provisions of the acts found under the head of *conveyances*, and making void all deeds, &c. as to creditors, and subsequent purchasers, until the same are filed for record. No person would expect to find such a provision in an act to abolish the office of State Recorder ; and any person by examining the acts under the head of *conveyances*, would very naturally be misled.

To obviate, in a great degree, such difficulties, marginal notes referring to the different statutes upon the same subject, have been inserted. The compiler does not profess to have noted every instance where such a reference would have been convenient, but he believes he has not omitted many. The *Table of Contents* and the *Index* cannot be prepared until the body of the work is printed. They have therefore been committed to competent hands upon the spot where the printing is to be done.

Chicago, April, 1839.

THE COMPILER.

A table of contents was not included in this volume. This guide was created by The Lincoln Legal Papers as a finding aid.

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DECLARATION OF INDEPENDENCE,

IN CONGRESS, JULY 4th, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires, that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident : that all men are created equal ; that they are endowed by their Creator with certain unalienable rights ; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed ; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes ; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies ; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies, at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time after such dissolutions to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them by a mock trial from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us, without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress, in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They, too, have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain is, and ought to be, totally dissolved; and that as free and independent states they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members:

JOHN HANCOCK.

NEW HAMPSHIRE.	Oliver Wolcott.
Josiah Bartlett,	NEW YORK.
William Whipple,	William Floyd,
Matthew Thornton.	Philip Livingston,
MASSACHUSETTS BAY.	Francis Lewis,
Samuel Adams,	Lewis Morris.
John Adams,	NEW JERSEY.
Robert Treat Paine,	Richard Stockton,
Elbridge Gerry.	John Witherspoon,
RHODE ISLAND, &C.	Francis Hopkinson,
Stephen Hopkins,	John Hart,
William Ellery.	Abraham Clark.
CONNECTICUT.	PENNSYLVANIA.
Roger Sherman,	Robert Morris,
Samuel Huntington,	Benjamin Rush,
William Williams,	Benjamin Franklin,

John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.

Cesar Rodney,
George Read,
Thomas M'Kean.

MARYLAND.

Samuel Chase,
William Paca,
Thomas Stone,
Charles Carroll, of Carrollton.

VIRGINIA.

George Wythe,
Richard Henry Lee,

Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jr.
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA.

William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.

Edward Rutledge,
Thomas Heyward, jr.
Thomas Lynch, jr.
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
George Walton.

ARTICLES OF CONFEDERATION

AND PERPETUAL UNION,

Between the states of *New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.*

ARTICLE I.

The style of this confederacy shall be, "THE UNITED STATES OF AMERICA."

ARTICLE II.

Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in congress assembled.

ARTICLE III.

The said states hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence whatever.

ARTICLE IV.

The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this Union, the free inhabitants of each of these states, (paupers, vagabonds, and fugitives from justice excepted,) shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions, as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state to any other state of which the owner is an inhabitant: *Provided also*, that no imposition, duties, or restriction shall be laid by any state on the property of the United States, or either of them.

If any person guilty of or charged with treason, felony, or other high misdemeanor, in any state, shall flee from justice, and be found in any of

the United States, he shall, upon demand of the governor, or executive power of the state from which he fled, be delivered up, and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

ARTICLE V.

For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each state shall direct, to meet in congress on the first *Monday* in *November*, in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No state shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emoluments of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States in congress assembled, each state shall have one vote.

Freedom of speech, and debate in congress, shall not be impeached or questioned in any other court or place out of congress; and the members of congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

ARTICLE VI.

No state, without the consent of the United States in congress assembled, shall send an embassy to, or receive an embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person, holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince or foreign state; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress to the Courts of *France* and *Spain*.

No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in congress assembled for the defence of such state or its trade; nor shall any body of forces be kept up by any state in time of peace, except such num-

ber only as, in the judgment of the United States in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide, and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of *Indians* to invade such state, and the danger is so imminent as not to admit of a delay till the United States in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled; and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled; unless such state be infested by pirates; in which case, vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in congress assembled shall determine otherwise.

ARTICLE VII.

When land forces are raised by any state for the common defence, all officers of, or under the rank of colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct; and all vacancies shall be filled up by the state which first made the appointment.

ARTICLE VIII.

All charges of war and all other expenses that shall be incurred for the common defence, or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state granted to, or surveyed for, any person, as such land, and the buildings and improvements thereon, shall be estimated according to such mode as the United States in congress assembled shall, from time to time, direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in congress assembled.

ARTICLE IX.

The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances: *Provided*, That no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing

rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures: *Provided*, That no member of congress shall be appointed a judge of any of the said courts.

The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more states, concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following:—Whenever the legislative or executive authority, or lawful agent of any state in controversy with another, shall present a petition to congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as congress shall direct, shall in the presence of congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear, and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or, being present, shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed in the manner before prescribed, shall be final and conclusive. And if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall, in like manner, be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress, for the security of the parties concerned: *Provided*, That every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, “well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection or hope of reward:” *Provided also*, That no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more states, whose jurisdiction, as they may respect such lands and the states which passed such grants, are adjusted, the said grants, or either of them, being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade, and managing all affairs with the *Indians*, not members of any of the states: *Provided*, That the legislative right of any state within its own limits be not infringed or violated—establishing and regulating post-offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in congress assembled, shall have authority to appoint a committee to sit in the recess of congress to be denominated, “*A Committee of the States*,” and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States, under their direction—to appoint one of their number to preside: *Provided*, That no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective states, an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisitions shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled, but if the United States in congress assembled shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped, in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same; in which case, they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared; and the officers and men, so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled.

The United States in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or

navy, unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in congress assembled.

The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE X.

The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the United States assembled is requisite.

ARTICLE XI.

Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII.

All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ARTICLE XIII.

Every state shall abide by the determination of the United States in congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislature of every state.

And whereas it has pleased the Great Governor of the world to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation, and perpetual union: KNOW YE, That we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these pre-

sents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained; and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in congress assembled, on all questions which, by the said confederation, are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent; and that the union shall be perpetual.

In witness whereof, we have hereunto set our hands, in congress, done at Philadelphia, in the state of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the Independence of America.

On the part and behalf of the state of New Hampshire.

Josiah Bartlett, John Wentworth, jr. Aug. 8, 1778.

On the part and behalf of the state of Massachusetts Bay.

John Hancock, Francis Dana,
Samuel Adams, James Lovell,
Elbridge Gerry, Samuel Holten.

On the part and behalf of the state of Rhode Island and Providence Plantations.

William Ellery, John Collins,
Henry Marchant,

On the part and behalf of the state of Connecticut.

Roger Sherman, Titus Hosmer,
Samuel Huntington, Andrew Adams,
Oliver Wolcott,

On the part and behalf of the state of New York.

Jas. Duane, Wm. Duer,
Fra. Lewis, Gouv. Morris.

On the part and behalf of the state of New Jersey.

Jno. Witherspoon, Nath. Scudder, Nov. 26, 1778.

On the part and behalf of the state of Pennsylvania.

Robt. Morris, William Clingan,
Daniel Roberdeau, Joseph Reed, 22d July, 1778.
Jona. Bayard Smith,

On the part and behalf of the state of Delaware.

Thomas McKean, Feb. 13, 1779. Nicholas Van Dyke.
John Dickinson, May 5th, 1779.

On the part and behalf of the state of Maryland.

John Hanson, March 1, 1781, Daniel Carroll, do.

On the part and behalf of the state of Virginia.

Richard Henry Lee, Jno. Harvie,
John Banister, Francis Lightfoot Lee,
Thomas Adams,

On the part and behalf of the state of North Carolina.

John Penn, July 21st, 1778, Jno. Williams.
Corns. Harnett,

On the part and behalf of the state of South Carolina.

Henry Laurens, Richard Hutson,
William Henry Drayton, Thomas Heyward, jr.
Jno. Matthews,

On the part and behalf of the state of Georgia.
Jno. Walton, 24th July, 1778, Edwd. Langworthy.
Edwd. Telfair,

[NOTE.—From the circumstance of delegates from the same state having signed the articles of confederation at different times, as appears by the dates, it is probable they affixed their names as they happened to be present in congress, after they had been authorized by their constituents.]

CONSTITUTION OF THE UNITED STATES.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION I.

1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative, who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative: and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three; *Massachusetts*, eight; *Rhode Island and Providence Plantations*, one; *Connecti-*

cut, five; *New York*, six; *New Jersey*, four; *Pennsylvania*, eight; *Delaware*, one; *Maryland*, six; *Virginia*, ten; *North Carolina*, five; *South Carolina*, five; and *Georgia*, three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate; but shall have no vote, unless they be equally divided.

5. The senate shall choose their other officers, and also a president, *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state, by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

2. Every bill, which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the

same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return; in which case, it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post offices and post roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress:

16. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be,

for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings :—and

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder or ex post facto law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another : nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law : and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

1. No state shall enter into any treaty, alliance or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make any thing but gold and silver coin a tender in payment of debts ; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts ; or grant any title of nobility.

2. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows :

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress ; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed ; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president ; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote : a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president ; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period

for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation :

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION 2.

1. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices ; and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided, two-thirds of the senators present concur : and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may by law, vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies, that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

SECTION 3.

1. He shall from time to time, give to the congress information of the state of the Union ; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed ; and shall commission all officers of the United States.

SECTION 4.

1. The president, vice president, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1.

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as the congress may, from time to time,

ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior ; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ; to all cases, affecting ambassadors, other public ministers, and consuls ; to all cases of admiralty and maritime jurisdiction ; to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens or subjects.

2. In all cases, affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trials shall be held in the state where the said crimes shall have been committed ; but when not committed within any state, the trial shall be at such place or places, as the congress may by law have directed.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The congress shall have power to declare the punishment of treason ; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION 1.

1. Full faith and credit, shall be given, in each state, to the public acts, records, and judicial proceedings of every other state. And the congress, may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3.

1. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4.

1. The United States shall guaranty to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

1. The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President,*
and deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

William Samuel Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

William Livingston,
David Brearly,
William Patterson,
Jonathan Dayton.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Governor Morris.

Attest,

DELAWARE.

George Reed,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

MARYLAND.

James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

VIRGINIA.

John Blair,
James Madison, jun.

NORTH CAROLINA.

William Blount,
Richard Dobbs Spaight,
Hugh Williamson.

SOUTH CAROLINA.

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abraham Baldwin.

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE 2.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE 3.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE 4.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE 5.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE 9.

The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE 12.

1. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following,

then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president: a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

ARTICLE 13.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

RESOLUTION

DECLARING THE ADMISSION OF THE STATE OF ILLINOIS INTO THE UNION.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, whereas, in pursuance of an act of congress, passed on the eighteenth day of April, one thousand eight hundred and eighteen, entitled "An act to enable the people of the Illinois Territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states," the people of said territory did, on the twenty-sixth day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity to the principles of the articles of compact between the original states and the people and states in the territory north-west of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven: *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the state of Illinois shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

APPROVED, December 3, 1818.

CONSTITUTION

OF THE

STATE OF ILLINOIS.

The people of the Illinois Territory, having the right of admission into the general government as a member of the Union, consistent with the constitution of the United States, the ordinance of congress of 1787, and the law of congress "approved April 18th, 1818," entitled "an act to enable the people of the Illinois Territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and for other purposes;" in order to establish justice, promote the welfare and secure the blessings of liberty to themselves and their posterity, do by their representatives in convention, ordain and establish the following constitution or form of government; and do mutually agree with each other to form themselves into a free and independent state by the name of the state of ILLINOIS. And they do hereby ratify the boundaries assigned to such state by the act of congress afore-said, which are as follows, to wit: Beginning at the mouth of the Wabash river, thence up the same, and with the line of Indiana to the north-west corner of said state; thence east with the line of the same state, to the middle of lake Michigan; thence north along the middle of said lake, to north latitude forty-two degrees and thirty minutes; thence west to the middle of the Mississippi river; and thence down along the middle of that river to its confluence with the Ohio river; and thence up the latter river along its north-western shore to the beginning.

ARTICLE I.

CONCERNING THE DISTRIBUTION OF THE POWERS OF GOVERNMENT.

SEC. 1. The powers of the government of the state of Illinois, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are legislative to one; those which are executive to another; and those which are judiciary to another.

SEC. 2. No person or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

ARTICLE II.

SEC. 1. The legislative authority of this state, shall be vested in a general assembly, which shall consist in a senate and house of representatives, both to be elected by the people.

SEC. 2. The first election for senators and representatives, shall commence on the third Thursday of September next, and continue for that and the two succeeding days; and the next election shall be held on the first Monday in August, one thousand eight hundred and twenty, and forever after, elections shall be held once in two years, on the first Monday of August, in each and every county, at such places therein as may be provided by law.

SEC. 3. No person shall be a representative who shall not have attained the age of twenty-one years, who shall not be a citizen of the United States, and an inhabitant of this state: who shall not have resided within the limits of the county or district in which he shall be chosen, twelve months next preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts out of which the same shall have been taken, unless he shall have been absent on the public business of the United States or of this state; and who moreover shall not have paid a state or county tax.

SEC. 4. The senators at their first session herein provided for, shall be divided by lot from their respective counties or districts, as near as can be, into two classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; and those of the second class at the expiration of the fourth year, so that one half thereof, as near as possible, may be biennially chosen forever thereafter.

SEC. 5. The number of senators and representatives, shall, at the first session of the general assembly, holden after the returns herein provided for are made, be fixed by the general assembly, and apportioned among the several counties or districts to be established by law, according to the number of white inhabitants. The number of representatives shall not be less than twenty-seven, nor more than thirty-six, until the number of inhabitants within this state shall amount to one hundred thousand; and the number of senators shall never be less than one-third nor more than one-half of the number of representatives.

SEC. 6. No person shall be a senator who has not arrived at the age of twenty-five years, who shall not be a citizen of the United States, and who shall not have resided one year in the county or district in which he shall be chosen immediately preceding his election, if such county or district shall have been so long erected; but if not, then within the limits of the county or counties, district or districts, out of which the same shall have been taken; unless he shall have been absent on the public business of the United States or of this state, and shall not moreover have paid a state or county tax.

SEC. 7. The senate and house of representatives, when assembled, shall each choose a speaker and other officers: (the speaker of the senate excepted:) each house shall judge of the qualifications and elections of its members, and sit upon its own adjournments. Two-thirds of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 8. Each house shall keep a journal of its proceedings, and publish them: the yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on the journals.

SEC. 9. Any two members of either house, shall have liberty to dissent and protest against any act or resolution which they may think injurious to the public, or to any individual, and have the reasons of their dissent entered on the journals.

SEC. 10. Each house may determine the rules of its proceedings, punish its members for disorderly behavior; and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

SEC. 11. When vacancies happen in either house, the governor, or the person exercising the powers of governor, shall issue writs of election to fill such vacancies.

SEC. 12. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and in going to, and returning from the same, and for any speech or debate in either house, they shall not be questioned in any other place.

SEC. 13. Each house may punish by imprisonment during its session, any person not a member, who shall be guilty of disrespect to the house, by any disorderly or contemptuous behavior in their presence; provided such imprisonment shall not at any one time exceed twenty-four hours.

SEC. 14. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of the house, require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the two houses shall be sitting.

SEC. 15. Bills may originate in either house, but may be altered, amended, or rejected by the other.

SEC. 16. Every bill shall be read on three different days in each house, unless in case of urgency, three-fourths of the house where such bill is so depending shall deem it expedient to dispense with this rule; and every bill having passed both houses shall be signed by the speakers of the respective houses.

SEC. 17. The style of the laws of this state shall be, "*Be it enacted by the people of the state of Illinois, represented in the general assembly.*"

SEC. 18. The general assembly of this state shall not allow the following officers of government greater or smaller annual salaries than as follows, until the year one thousand eight hundred and twenty-four: The governor one thousand dollars; and the secretary of state, six hundred dollars.

SEC. 19. No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased during such time.

SEC. 20. No money shall be drawn from the treasury but in consequence of appropriations made by law.

SEC. 21. An accurate statement of the receipts and expenditures of the public money, shall be attached to, and published with, the laws, at the rising of each session of the general assembly.

SEC. 22. The house of representatives shall have the sole power of impeaching, but a majority of all the members present must concur in an impeachment; all impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall be upon oath or affirmation, to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of all the senators present.

SEC. 23. The governor, and all other civil officers under this state, shall be liable to impeachment for any misdemeanor in office: but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, profit or trust under this state. The party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

SEC. 24. The first session of the general assembly shall commence on the first Monday of October next, and forever after, the general assembly shall meet on the first Monday in December next ensuing the election of the members thereof, and at no other period, unless as provided by this constitution.

SEC. 25. No judge of any court of law or equity, secretary of state, attorney-general, attorney for the state, register, clerk of any court of record, sheriff or collector, member of either house of congress, or person holding any lucrative office under the United States or this state, (provided that appointments in the militia, postmasters or justices of the peace shall not be considered lucrative offices,) shall have a seat in the general assembly: nor shall any person holding any office of honor or profit under the government of the United States, hold any office of honor or profit under the authority of this state.

SEC. 26. Every person who shall be chosen or appointed to any office of trust or profit shall, before entering upon the duties thereof, take an oath to support the constitution of the United States and of this state, and also an oath of office.

SEC. 27. In all elections, all white male inhabitants above the age of twenty-one years, having resided in the state six months next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote except in the county or district in which he shall actually reside at the time of the election.

SEC. 28. All votes shall be given viva voce until altered by the general assembly.

SEC. 29. Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

SEC. 30. The general assembly shall have full power to exclude from the privilege of electing or being elected any person convicted of bribery, perjury or any other infamous crime.

SEC. 31. In the year one thousand eight hundred and twenty, and every fifth year thereafter, an enumeration of all the white inhabitants of the state shall be made, in such manner as shall be directed by law.

SEC. 32. All bills for raising a revenue shall originate in the house of representatives, subject, however, to amendment, or rejection as in other cases.

ARTICLE III.

SEC. 1. The executive power of the state shall be vested in a governor.

SEC. 2. The first election of governor shall commence on the third Thursday of September next, and continue for that and the two succeeding days; and the next election shall be held on the first Monday of August, in the year of our Lord one thousand eight hundred and twenty-two. And forever after, elections for governor shall be held once in four years, on the first Monday of August. The governor shall be chosen by the electors of the members of the general assembly, at the same places and in the same manner that they shall respectively vote for members thereof. The returns for every election of governor shall be sealed up and transmitted to the seat of government by the returning officers, directed to the speaker of the house of representatives, who shall open and publish them in the presence of a majority of the members of each house of the general assembly. The

person having the highest number of votes shall be governor; but if two or more be equal and highest in votes, then one of them shall be chosen governor by joint ballot of both houses of the general assembly. Contested elections shall be determined by both houses of the general assembly in such manner as shall be prescribed by law.

SEC. 3. The first governor shall hold his office until the first Monday of December, in the year of our Lord one thousand eight hundred and twenty-two, and until another governor shall be elected and qualified to office: and forever after, the governor shall hold his office for the term of four years, and until another governor shall be elected and qualified; but he shall not be eligible for more than four years in any term of eight years. He shall be at least thirty years of age, and have been a citizen of the United States thirty years; two years of which next preceding his election he shall have resided within the limits of this state.

SEC. 4. He shall, from time to time, give the general assembly information of the state of the government, and recommend to their consideration such measures as he shall deem expedient.

SEC. 5. He shall have power to grant reprieves and pardons after conviction, except in cases of impeachment.

SEC. 6. The governor shall, at stated times, receive a salary for his services, which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. 7. He may require information in writing from the officers in the executive department, upon any subject relating to the duties of their respective offices, and shall take care that the laws be faithfully executed.

SEC. 8. When any officer, the right of whose appointment is, by this constitution vested in the general assembly, or in the governor and senate, shall, during the recess, die, or his office by any means, become vacant, the governor shall have power to fill such vacancy, by granting a commission which shall expire at the end of the next session of the general assembly.

SEC. 9. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to them when assembled, the purpose for which they shall have been convened.

SEC. 10. He shall be commander-in-chief of the army and navy of this state, and of the militia, except when they shall be called into the service of the United States.

SEC. 11. There shall be elected in each and every county in the said state, by those who are qualified to vote for members of the general assembly, and at the same times and places where the election for such members shall be held, one sheriff and one coroner, whose election shall be subject to such rules and regulations as shall be prescribed by law. The said sheriffs and coroners respectively, when elected, shall continue in office two years, be subject to removal and disqualification, and such other rules and regulations as may be, from time to time prescribed by law.

SEC. 12. In case of disagreement between the two houses with respect to the time of adjournment, the governor shall have power to adjourn the general assembly, to such time as he thinks proper, provided it be not to a period beyond the next constitutional meeting of the same.

SEC. 13. A lieutenant-governor shall be chosen at every election for governor, in the same manner, continue in office for the same time and possess the same qualifications. In voting for governor and lieutenant-governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant-governor.

SEC. 14. He shall by virtue of his office be speaker of the senate, have a right, when in committee of the whole to debate, and vote on all subjects; and whenever the senate are equally divided, to give the casting vote.

SEC. 15. Whenever the government shall be administered by the lieutenant-governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own members as speaker for that occasion; and if during the vacancy of the office of governor, the lieutenant-governor shall be impeached, removed from office, refuse to qualify, or resign or die, or be absent from the state, the speaker of the senate shall in like manner administer the government.

SEC. 16. The lieutenant-governor, while he acts as speaker of the senate, shall receive for his services, the same compensation, which shall for the same period be allowed to the speaker of the house of representatives and no more: and during the time he administers the government as governor, he shall receive the same compensation which the governor would have received had he been employed in the duties of his office.

SEC. 17. If the lieutenant-governor shall be called upon to administer the government, and shall, while in such administration resign, die or be absent from the state during the recess of the general assembly, it shall be the duty of the secretary for the time being, to convene the senate for the purpose of choosing a speaker.

SEC. 18. In case of an impeachment of the governor, his removal from office, death, refusal to qualify, resignation or absence from the state, the lieutenant-governor shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy.

SEC. 19. The governor for the time being and the judges of the supreme court or a major part of them, together with the governor, shall be and are hereby constituted a council to revise all bills about to be passed into laws by the general assembly; and for that purpose shall assemble themselves from time to time when the general assembly shall be convened; for which nevertheless they shall not receive any salary or consideration under any pretence whatever; and all bills which have passed the senate and house of representatives shall, before they become laws, be presented to the said council for their revisal and consideration; and if upon such revisal and consideration, it should appear improper to the said council or a majority of them, that the bill should become a law of this state, they shall return the same, together with their objections thereto in writing to the senate or house of representatives (in whichever the same shall have originated) who shall enter the objections set down by the council at large in their minutes, and proceed to reconsider the said bill. But if after such reconsideration the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same by a majority of the whole number of members elected; it shall, together with the said objections, be sent to the other branch of the general assembly, where it shall also be reconsidered; and if approved by a majority of all the members elected, it shall become a law. If any bill shall not be returned within ten days after it shall have been presented, the same shall be a law; unless the general assembly shall by their adjournment render a return of the said bill in ten days impracticable; in which case the said bill shall be returned on the first day of the meeting of the general assembly, after the expiration of the said ten days, or be a law.

SEC. 20. The governor shall nominate, and by and with the advice and consent of the senate appoint a secretary of state, who shall keep a fair register of the official acts of the governor, and when required, shall lay the same and all papers, minutes and vouchers, relative thereto, before either branch of the general assembly, and shall perform such other duties as shall be assigned him by law.

SEC. 21. The state treasurer and public printer or printers for the state shall be appointed biennially by the joint vote of both branches of the general assembly: *Provided*, That during the recess of the same, the governor shall have power to fill such vacancies as may happen in either of said offices.

SEC. 22. The governor shall nominate, and by and with the advice and consent of the senate, appoint all officers whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for: *Provided however*, That inspectors, collectors and their deputies, surveyors of the highways, constables, jailors and such inferior officers whose jurisdiction may be confined within the limits of the county, shall be appointed in such manner as the general assembly shall prescribe.

ARTICLE IV.

SEC. 1. The judicial power of this state shall be vested in one supreme court, and such inferior courts as the general assembly shall from time to time, ordain and establish.

SEC. 2. The supreme court shall be holden at the seat of government, and shall have an appellate jurisdiction only, except in cases relating to the revenue, in cases of mandamus, and in such cases of impeachment as may be required to be tried before it.

SEC. 3. The supreme court shall consist in a chief justice and three associates, any two of whom shall form a quorum. The number of justices may, however, be increased by the general assembly after the year one thousand eight hundred and twenty-four.

SEC. 4. The justices of the supreme court and the judges of the inferior courts shall be appointed by joint ballot of both branches of the general assembly, and commissioned by the governor, and shall hold their offices during good behavior until the end of the first session of the general assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-four, at which time their commissions shall expire: and until the expiration of which time, the said justices, respectively, shall hold circuit courts in the several counties, in such manner and at such times, and shall have and exercise such jurisdiction as the general assembly shall by law prescribe. But ever after the aforesaid period, the justices of the supreme court shall be commissioned during good behavior, and the justices thereof shall not hold circuit courts unless required by law.

SEC. 5. The judges of the inferior courts shall hold their offices during good behavior, but for any reasonable cause which shall not be sufficient ground for impeachment, both the judges of the supreme and inferior courts shall be removed from office on the address of two-thirds of each branch of the general assembly: *Provided always*, That no member of either house of the general assembly, nor any person connected with a member by consanguinity, or affinity, shall be appointed to fill the vacancy occasioned by such removal. The said justices of the supreme court, during their tempo-

rary appointments, shall receive an annual salary, of one thousand dollars, payable quarter yearly out of the public treasury. The judges of the inferior courts, and the justices of the supreme court who may be appointed after the end of the first session of the general assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-four, shall have adequate and competent salaries, which shall not be diminished during their continuance in office.

SEC. 6. The supreme court, or a majority of the justices thereof, the circuit courts, or the justices thereof, shall, respectively, appoint their own clerks.

SEC. 7. All process, writs and other proceedings shall run in the name of "*the people of the state of Illinois.*" All prosecutions shall be carried on "*in the name and by the authority of the people of the state of Illinois,*" and conclude "*against the peace and dignity of the same.*"

SEC. 8. A competent number of justices of the peace shall be appointed in each county in such manner as the general assembly may direct, whose time of service, power, and duties shall be regulated and defined by law. And justices of the peace, when so appointed, shall be commissioned by the governor.

ARTICLE V.

SEC. 1. The militia of the state of Illinois shall consist of all free male able bodied persons, negroes, mulattoes and Indians excepted, resident of the state, between the ages of eighteen and forty-five years, except such persons as now are, or hereafter may be exempted by the laws of the United States or of this state, and shall be armed, equipped, and trained as the general assembly may provide by law.

SEC. 2. No person or persons, conscientiously scrupulous of bearing arms shall be compelled to do militia duty in time of peace, provided such person or persons shall pay an equivalent for such exemption.

SEC. 3. Company, battalion and regimental officers, staff officers excepted, shall be elected by the persons composing their several companies, battalions and regiments.

SEC. 4. Brigadier and major generals shall be elected by the officers of their brigades and divisions respectively.

SEC. 5. All militia officers shall be commissioned by the governor, and may hold their commissions during good behavior, or until they arrive at the age of sixty years.

SEC. 6. The militia shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at musters and elections of officers, and in going to and returning from the same.

ARTICLE VI.

SEC. 1. Neither slavery nor involuntary servitude shall hereafter be introduced into this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted; nor shall any male person, arrived at the age of twenty-one years, nor female person, arrived at the age of eighteen years, be held to serve any person as a servant, under any indenture hereafter made, unless such person shall enter into such indenture while in a state of perfect freedom, and on condition of a bona fide consideration received or to be received for their service. Nor shall any

indenture of any negro or mulatto hereafter made and executed out of this state, or if made in this state, where the term of service exceeds one year, be of the least validity, except those given in cases of apprenticeship.

SEC. 2. No person bound to labor in any other state, shall be hired to labor in this state, except within the tract reserved for the salt works near Shawneetown; nor even at that place for a longer period than one year at any one time; nor shall it be allowed there after the year one thousand eight hundred and twenty-five: any violation of this article shall effect the emancipation of such person from his obligation to service.

SEC. 3. Each and every person who has been bound to service by contract or indenture in virtue of the laws of the Illinois territory heretofore existing, and in conformity to the provisions of the same, without fraud or collusion, shall be held to a specific performance of their contracts or indentures; and such negroes and mulattoes as have been registered in conformity with the aforesaid laws shall serve out the time appointed by said laws: provided however, that the children hereafter born of such persons, negroes or mulattoes, shall become free, the males at the age of twenty-one years, the females at the age of eighteen years. Each and every child born of indentured parents, shall be entered with the clerk of the county in which they reside by their owners, within six months after the birth of said child.

ARTICLE VII.

SEC. 1. Whenever two-thirds of the general assembly shall think it necessary to alter or amend this constitution, they shall recommend to the electors at the next election of members to the general assembly to vote for or against a convention; and if it shall appear that a majority of all the citizens of the state voting for representatives have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there may be in the general assembly; to be chosen in the same manner, at the same place and by the same electors that choose the general assembly, and which convention shall meet within three months after the said election, for the purpose of revising, altering or amending this constitution.

ARTICLE VIII.

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE,

SEC. 1. That all men are born equally free and independent, and have certain inherent and indefeasible rights; among which are those of enjoying and defending life and liberty, and of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

SEC. 2. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, and happiness.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishments or modes of worship.

SEC. 4. That no religious test shall ever be required as a qualification to any office or public trust under this state.

SEC. 5. That elections shall be free and equal.

SEC. 6. That the right of the trial by jury shall remain inviolate.

SEC. 7. That the people shall be secure in their persons, houses, papers, and possessions from unreasonable searches and seizures; and that general warrants whereby an officer may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

SEC. 8. That no freeman shall be imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or property, but by the judgment of his peers or the law of the land. And all lands which have been granted as a common to the inhabitants of any town, hamlet, village or corporation, by any person, body politic or corporate, or by any government having power to make such grant, shall forever remain common to the inhabitants of such town, hamlet, village or corporation: and the said commons shall not be leased, sold or divided under any pretence whatever: Provided however, that nothing in this section shall be so construed as to affect the commons of Cahokia or Prairie du Pont: Provided also, that the general assembly shall have power and authority to grant the same privileges to the inhabitants of the said villages of Cahokia and Prairie du Pont as are hereby granted to the inhabitants of other towns, hamlets, and villages.

SEC. 9. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his favor. And in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage: and that he shall not be compelled to give evidence against himself.

SEC. 10. That no person shall, for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or the militia when in actual service, in time of war or public danger, by leave of the courts, for oppression or misdemeanor in office.

SEC. 11. No person shall, for the same offence, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives in the general assembly, nor without just compensation being made to him.

SEC. 12. Every person within this state ought to find a certain remedy in the laws, for all injuries or wrongs which he may receive in his person, property or character; he ought to obtain right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

SEC. 13. That all persons shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

SEC. 14. All penalties shall be proportioned to the nature of the offence, the true design of all punishment being to reform, not to exterminate mankind.

SEC. 15. No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases where there is strong presumption of fraud.

SEC. 16. No *ex post facto* law, nor any law impairing the validity of contracts shall ever be made; and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 17. That no person shall be liable to be transported out of this state for any offence committed within the same.

SEC. 18. That a frequent recurrence of the fundamental principles of civil government is absolutely necessary to preserve the blessings of liberty.

SEC. 19. That the people have a right to assemble together in a peaceable manner to consult for their common good, to instruct their representatives, and to apply to the general assembly for redress of grievances.

SEC. 20. That the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession.

SEC. 21. That there shall be no other banks or monied institutions in this state but those already provided by law, except a state bank and its branches, which may be established and regulated by the general assembly of the state as they may think proper.

SEC. 22. The printing presses shall be free to every person who undertakes to examine the proceedings of the general assembly or of any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

SEC. 23. In prosecutions for the publication of papers investigating the official conduct of officers, or of men acting in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels the jury shall have the right of determining both the law and the fact, under the direction of the court as in other cases.

SCHEDULE.

SEC. 1. That no inconveniences may arise from the change of a territorial to a permanent state government, it is declared by the convention, that all rights, suits, actions, prosecutions, claims, and contracts, both as it respects individuals and bodies corporate, shall continue as if no change had taken place in this government in virtue of the laws now in force.

SEC. 2. All fines, penalties, and forfeitures due and owing to the territory of Illinois shall enure to the use of the state. All bonds executed to the governor, or to any other officer in his official capacity in the territory, shall pass over to the governor or to the officers of the state, and their successors in office, for the use of the state, by him or by them to be respectively assigned over to the use of those concerned, as the case may be.

SEC. 3. No sheriff, or collector of public moneys, shall be eligible to any

office in this state, until they have paid over according to law, all moneys which they may have collected by virtue of their respective offices.

SEC. 4. There shall be elected in each county three county commissioners for the purpose of transacting all county business, whose time of service, power and duties shall be regulated and defined by law.

SEC. 5. The governor, secretary, and judges, and all other officers under the territorial government shall continue in the exercise of the duties of their respective departments until the said officers are superseded under the authority of this constitution.

SEC. 6. The governor of this state shall make use of his private seal, until a state seal shall be provided.

SEC. 7. The oaths of office herein directed to be taken, may be administered by any justice of the peace until the general assembly shall otherwise direct.

SEC. 8. Until the first census shall be taken as directed by this constitution, the county of Madison shall be entitled to one senator and three representatives; the county of St. Clair, to one senator and three representatives; the county of Bond, to one senator and one representative; the county of Washington, to one senator and one representative; the county of Monroe, to one senator and one representative; the county of Randolph, to one senator and two representatives; the county of Jackson, to one senator and one representative; the counties of Johnson and Franklin to form one senatorial district, and to be entitled to one senator, and each county to one representative; the county of Union, to one senator, and two representatives; the county of Pope, to one senator and two representatives; the county of Gallatin, to one senator and three representatives; the county of White, to one senator and three representatives; the county of Edwards, to one senator and two representatives; and the county of Crawford, to one senator and two representatives.

SEC. 9. The president of the convention shall issue writs of election, directed to the several sheriffs of the several counties, or in case of the absence or disability of any sheriff, then to the deputy sheriff, and in case of the absence or disability of the deputy sheriff, then such writ to be directed to the coroner, requiring them to cause an election to be held for governor, lieutenant-governor, representative to the present congress of the United States, and members to the general assembly, and sheriffs and coroners, in the respective counties; such election to commence on the third Thursday of September next, and to continue for that and the two succeeding days; and which election shall be conducted in the manner prescribed by the existing election laws of the Illinois territory; and the said governor, lieutenant-governor, members of the general assembly, sheriffs and coroners, then duly elected, shall continue to exercise the duties of their respective offices for the time prescribed by this constitution, and until their successor or successors are qualified, and no longer.

SEC. 10. An auditor of public accounts, an attorney general, and such other officers for the state as may be necessary, may be appointed by the general assembly; whose duties may be regulated by law.

SEC. 11. It shall be the duty of the general assembly to enact such laws as may be necessary and proper to prevent the practice of duelling.

SEC. 12. All white male inhabitants above the age of twenty-one years, who shall be actual residents of this state, at the signing of this constitution, shall have a right to a vote at the election to be held on the third Thursday and the two following days of September next.

SEC. 13. The seat of government for the state shall be at Kaskaskia until the general assembly shall otherwise provide. The general assembly, at their first session holden under the authority of this constitution, shall petition the congress of the United States, to grant to this state a quantity of land, to consist of not more than four, nor less than one section, or to give to this state the right of pre-emption in the purchase of the said quantity of land. The said land to be situate on the Kaskaskia river, and as near as may be, east of the third principal meridian on said river. Should the prayer of such petition be granted, the general assembly, at their next session thereafter, shall provide for the appointment of five commissioners to make the selection of said land so granted; and shall further provide for laying out a town upon the land so selected; which town, so laid out, shall be the seat of government of this state for the term of twenty years. Should, however, the prayer of said petition not be granted, the general assembly shall have power to make such provisions for a permanent seat of government as may be necessary, and shall fix the same where they may think best.

SEC. 14. Any person of thirty years of age who is a citizen of the United States and has resided within the limits of this state two years next preceding his election, shall be eligible to the office of lieutenant-governor—any thing in the thirteenth section of the third article of this constitution contained to the contrary notwithstanding.

Done in convention at Kaskaskia, the twenty-sixth day of August, in the year of our Lord, one thousand eight hundred and eighteen, and of the independence of the United States of America, the forty-third.

IN TESTIMONY WHEREOF, we have hereunto subscribed our names.

JESSE B. THOMAS, *President of the convention and representative from the county of St. Clair.*

John Messinger,	}	<i>St. Clair county.</i>
James Lemen, jr.		
George Fisher,	}	<i>Randolph county.</i>
Elias Kent Kane,		
B. Stephenson,	}	<i>Madison county.</i>
Joseph Borough,		
Abraham Prickett,		
Michael Jones,	}	<i>Gallatin county.</i>
Leonard White,		
Adolphus Frederick Hubbard,		
Hezekiah West,	}	<i>Johnson county.</i>
William M ^r Patridge,		
Seth Gard,	}	<i>Edwards county.</i>
Levi Compton,		
Willis Hargrave,	}	<i>White county.</i>
William M ^r Henry,		
Caldwell Carns,	}	<i>Monroe county.</i>
Epoch Moore,		
Samuel Omelveny,	}	<i>Pope county.</i>
Hamlet Ferguson,		
Conrad Will,	}	<i>Jackson county.</i>
James Hall, jr.		
Joseph Kitchell,	}	<i>Crawford county.</i>
Ed. N. Cullom,		
Thos. Kirkpatrick,	}	<i>Bond county.</i>
Samuel G. Morse,		

William Echols, }
 John Whiteaker, } *Union county.*
 Andrew Bankson, } *Washington county.*
 Isham Harrison, }
 Thomas Roberts, } *Franklin county.*

ATTEST,

WM. C. GREENUP,
Secretary to the Convention.

AN ORDINANCE.

WHEREAS, the congress of the United States, in the act entitled "An act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, passed the 18th of April, 1818," have offered to this convention for their free acceptance or rejection, the following propositions, which, if accepted by the convention are to be obligatory upon the United States, viz :

1st. That section numbered sixteen in every township, and when such section has been sold, or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the state for the use of the inhabitants of such township for the use of schools.

2d. That all salt springs within such state, and the lands reserved for the use of the same shall be granted to the said state for the use of the said state, and the same to be used under such terms and conditions and regulations as the legislature of said state shall direct ; provided the legislature shall never sell nor lease the same for a longer period than ten years at any one time.

3d. That five per cent. of the net proceeds of the lands lying within such state, and which shall be sold by congress from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz : Two-fifths to be disbursed under the direction of congress, in making roads leading to the state ; the residue to be appropriated by the legislature of the state for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a college or university.

4th. That thirty-six sections or one entire township, which shall be designated by the president of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state, to be appropriated solely to the use of such seminary by the said legislature."

And whereas, the four foregoing propositions are offered on the condition that this convention shall provide by ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of January, 1819, shall remain exempt from any tax laid by order, or under the authority of the state, whether for state, county or township, or any other purpose whatever, for the term of five years, from and after the day of sale. And further, that the bounty lands granted, or hereafter to be granted for military services during the late war, shall, while they continue to be held by the patentees or their

heirs, remain exempt as aforesaid from all taxes for the term of three years from and after the date of the patents respectively ; and that all the lands belonging to the citizens of the United States, residing without the said state shall never be taxed higher than lands belonging to persons residing therein.

Therefore, this convention, on behalf of, and by the authority of the people of the state, do accept of the foregoing propositions ; and do further ordain and declare, that every and each tract of land sold by the United States, from and after the first day of January, 1819, shall remain exempt from any tax laid by order, or under any authority of the state, whether for state, county or township, or any purpose whatever, for the term of five years from and after the day of sale. And that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt, as aforesaid, from all taxes for the term of three years from and after the date of the patents respectively ; and that all the lands belonging to the citizens of the United States, residing without the said state, shall never be taxed higher than lands belonging to persons residing therein. And this convention do further ordain and declare, that the foregoing ordinance shall not be revoked without the consent of the United States.

Done in convention at Kaskaskia, the twenty-sixth day of August, in the year of our Lord, one thousand eight hundred and eighteen, and of the independence of the United States of America, the forty-third.

JESSE B. THOMAS,
President of the Convention.

ATTEST,

WM. C. GREENUP,
Secretary of the Convention.

AN ORDINANCE

For the government of the territory of the United States north-west of the river Ohio.

Be it ordained by the United States in congress assembled, That the said territory, for the purposes of temporary government, be one district ; subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child, in equal parts, the descendants of a deceased child or grand child to take the share of their deceased parent in equal parts among them : and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree ; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share ; and there shall, in no case, be a distinction between kindred of the whole and half blood ; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one third part of the personal estate ; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And

until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered, by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers, shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress: he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed, from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months, to the secretary of congress: There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to congress, from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

The governor for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made

shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; provided that, for every five hundred free male inhabitants, there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature; provided, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; provided also, that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress; five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The

governor shall have power to convene, prorogue, and dissolve, the general assembly, when in his opinion it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office ; the governor before the president of congress, and all other officers before the governor. As soon as the legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions, are erected ; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory ; to provide, also, for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest :

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact, between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit :

ARTICLE I.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ARTICLE II.

The inhabitants of the said territory shall always be entitled to the benefits of the writs of habeas corpus, and of the trial by jury ; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall beailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate ; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with, or affect, private contracts or engagements, bona fide, and without fraud previously formed.

ARTICLE III.

Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians ; their lands and property shall never be taken from

them without their consent ; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by congress ; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV.

The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made ; and to all the acts and ordinances of the United States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states ; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary, for securing the title in such soil, to the bona fide purchasers. No tax shall be imposed on lands the property of the United States ; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V.

There shall be formed in the said territory, not less than three, nor more than five states ; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit : the western state in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash rivers ; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada ; and by the said territorial line to the lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line : provided however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that, if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan. And whenever any of the said states shall have sixty

thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States, on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government: provided the constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ARTICLE VI.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed, and declared null and void.

Done, &c.

THE PUBLIC AND GENERAL
STATUTE LAWS
OF THE STATE OF ILLINOIS.

ABATEMENT.

AN ACT relative to pleas in abatement, and the abatement of suits *In force*
by the death of parties. *Dec. 16,*
1826.

SECTION 1. *Be it enacted by the people of the state of Illinois,* *Pleas in*
represented in the General Assembly, That no plea in abatement, *abatement*
other than a plea to the jurisdiction of the court, or where the truth *not received*
of such plea appears of record, shall be admitted or received, un- *unless on*
less the party offering the same, file an affidavit of the truth thereof. *oath.*
And where a plea in abatement shall, upon argument, be determined *Costs*
insufficient, the plaintiff shall recover full costs, to the time of over- *awarded on*
ruling such plea. *insufficient*
pleas.

SEC. 2. When one or more of the parties of a company, or *Suits*
association of individuals, shall be sued, and the person or persons *against*
so sued, shall plead in abatement, that all the parties are not joined *companies*
in the suit, such suit, for that cause, shall not abate, if the plaintiff *not to abate*
or plaintiffs, forthwith sue out a summons against the other part- *if summons*
ners named in the plea of abatement, and on the return of the sum- *be forth-*
mons, may insert in the declaration, the names of the other partners *with issued*
named in such plea, and proceed in all respects thereafter, as though *against*
such other partners named in said plea had been included in the *those not*
original suit. And if such partners named in said plea, cannot be *joined.*
found, the plaintiff or plaintiffs, upon the return of the said sum- *If parties*
mons, may suggest in his declaration the names of those not found, *cannot be*
and proceed as in other cases where service is only made on part *found it*
of the defendants. And no other plea in abatement for non-joinder *may be*
of defendants shall be allowed in the case. *suggested,*
&c.

SEC. 3. No action commenced by a single woman, who inter- *No other*
marries during the pendency thereof, shall abate on account of *plea in*
such marriage: *Provided,* the husband shall appear in court, and *abatement*
cause such marriage to be suggested on the record, and the suit *allowed.*
may then proceed in the same manner as if it had been commenced *Suits not to*
after such marriage. *abate by*
marriage.
Proviso.

Suits not to abate by death of plaintiff, if, &c. and executor or administrator may prosecute the same.
Same if defendant die, if, &c. If death is suggested, summons may issue and suit proceed to final judgment.
Suits against administrators not to abate by revocation of letters of administration. Summons to be served on last administrator.
Death not to abate suits, where there are two or more plaintiffs, or defendants if cause of action survive.
Writ of error included.
Act of 1819 repealed.

SEC. 4. When any action shall be pending in any of the courts of this state, and the plaintiff, before final judgment, shall die, the same shall not abate, if it might originally have been prosecuted by his executor or administrator; and in such case the executor or administrator may suggest such death on the record, and enter his, her or their names in the suit, and prosecute the same. And if the defendant, while the action shall be pending in court, and before final judgment, shall die, the same shall not abate, if it might originally have been prosecuted against the executor or administrator. And the plaintiff, or his executor or administrator, may suggest such death on the record, and have a summons against the executor or administrator of such deceased defendant, requiring them to appear and defend the action. If the said executor or administrator of such deceased defendant, shall appear and make him, her or themselves defendants, or if they shall not appear and make themselves defendants, (such summons being served on any one of them, ten days before the sitting of the court,) the action shall, in either case, proceed to final judgment according to law. And when a suit shall be commenced against an administrator, and before final judgment, his letters of administration shall be revoked, and letters of administration be granted to another person, such suit shall not abate, but the plaintiff shall suggest such fact upon record; and after summons shall be served upon the last administrator, the suit shall proceed to final judgment as in other cases under this act.

SEC. 5. In any action pending before any court, if there be two or more plaintiffs or defendants, and one or more of them die before final judgment, if the cause of action survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not abate, but such death being suggested on the record, the action shall proceed.

SEC. 6. The third, fourth, and fifth sections of this act shall be applicable to all appeals and writs of error.

SEC. 7. The act entitled "An act concerning the abatement of suits by the death of parties," approved February 6, 1819, is hereby repealed.

APPROVED, December 30, 1826.

ACCOUNT.

AN ACT to regulate Actions of Account.

In force June 1st, 1827.
Action of account extended to joint tenants, tenants in common and coparceners,

SECTION 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, That when one or more joint tenants, tenants in common or coparceners, in real estate, or any interest therein, shall take, use or have the benefit thereof, in greater proportion than his, her or their interest therein, such person or persons, or his or their executors and administrators, shall be liable to render his or their reasonable account to the use

and profit of such estate or interest, to his and their co-tenant jointly and severally. Actions of account may be brought and maintained, by one joint tenant, tenant in common or coparcener, his or her executors or administrators against such, or any such co-tenant receiving more than comes to his or her just share or proportion, as bailiff or bailiffs, and against his or her executors or administrators.

or their executors or administrators.

SEC. 2. Any executor, being a residuary legatee, may bring and maintain an action of account against his co-executor or executors of the estate of the testator, in his or their hands; any other residuary legatee shall have the like remedy against executors and administrators.

Residuary legatee may maintain action of account.

SEC. 3. Executors and administrators may have and maintain actions of account, in the same manner as their testator or intestate might have had and maintained, if he or she had lived. Such actions may be brought and maintained against the executors or administrators of every guardian, bailiff or receiver.

Executors and administrators may maintain action as their testator or intestate might.

SEC. 4. When any person is or shall be liable to account, as guardian, bailiff or receiver, or otherwise to another, and will not give an account willingly, and the party to whom such an account ought to be made, shall sue out a writ of account, and the person against whom such writ shall be issued, being summoned, does not appear at the return of the writ, then the defendant shall be attached by his or her body to come and render his or her account.

Persons liable to the action not appearing, to be attached.

SEC. 5. Whenever a judgment shall be rendered against any defendant, in an action of account, that he do account, the court shall appoint not more than five, nor less than three able, disinterested and judicious men as auditors, to take the account, who shall be sworn faithfully and impartially to take and state the account, between the parties, and make report to the court; the auditors, or a majority of them, shall have power to appoint the time and place for the hearing, and shall give reasonable notice to the parties: and if the defendant shall neglect or refuse to attend at the time and place appointed and render his account, or appearing shall not render an account, the auditors shall receive a statement of the account from the plaintiff and award to him the whole sum he claims to be due.

When judgment is rendered auditors to be appointed.

SEC. 6. If the parties appear, and produce their books and accounts before the said auditors, such auditors, or a majority of them, shall proceed to take and state the accounts, and may take the testimony of witnesses, and examine either or both of the parties on oath respecting their accounts; and may administer all necessary oaths to witnesses and parties. The auditors shall liquidate and adjust the accounts and state the balance and to whom due. They, or a majority of those present, shall report to the court by whom they were appointed, at the next term thereof; and if such report shall be approved by the court, the court shall render judgment for the amount ascertained to be due, with costs; and the party in whose favor the report is made, shall pay the auditors their fees, which shall be taxed as costs. If either party shall refuse to be sworn, or answer proper questions respecting his account, the auditors may commit him to jail, there to remain, until he consent to be sworn or answer the interrogatories.

Power of auditors. Defendants not appearing, plaintiff's account to be received.

If parties appear auditors to state accounts.

May examine witnesses or parties.

To make report, upon which judgment is to be rendered with costs.

If Party refusing to be sworn may be committed to jail.

SEC. 7. Either party may appeal or prosecute a writ of error, from the final judgment upon the report of the auditors, in the same manner, and upon the same conditions, as provided by law in other cases. This act to take effect on the first day of June next.

Writs of error allowed.

APPROVED, Jan. 11th, 1827.

ADVERTISEMENTS.

AN ACT concerning the publication of Advertisements.

In force Dec. 23, 1826.

Certificate of printer evidence of publication of advertisement.

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That when any notice or advertisement shall be required by law, or the order of any court, to be published in any newspaper, the certificate of the printer or publisher, with a written or printed copy of such advertisement annexed, stating the number of papers in which the same shall have been published, and the dates of the first and last papers containing the same, shall be sufficient evidence of the publication therein set forth.

Advertisement to be paid for by party having the same inserted, and to be taxed as costs.

Public advertisement to be paid for out of state or county treasury.

SEC. 2. When any notice or advertisement shall be duly published as aforesaid, relating to any cause or matter depending in any court of record, the same shall be paid by the party at whose instance the same shall be published; who may exhibit his account therefor to the proper court, which account, or so much thereof as shall be deemed reasonable, may be taxed as costs, or otherwise allowed in the course of the proceeding to which such advertisement relates. And when such advertisement shall be made by any public officer, authorized by law so to do, the reasonable expense thereof, shall be allowed and paid out of the state or county treasury, as other demands and charges of the like nature.

APPROVED, Dec. 28th, 1826.

AMENDMENTS AND JEOFAILS.

AN ACT concerning Amendments and JEOFails.

In force 1st June, 1827.

Misprision of a clerk not to vitiate process or record.

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That by the misprision of a clerk in any place wheresoever it be, no record or process shall be annulled or discontinued, by mistaking, in writing, one syllable or one letter too much or too little; but as soon as the thing is perceived, by challenge of the party, or in other manner, it shall be immediately amended in due form, without giving advantage to the party that challenges the same, because of such misprision; and the court before whom such plea or record is made, or

shall be depending, as well by adjournment, as by way of appeal, or error, or otherwise, shall have power and authority, to amend such record and process as aforesaid, as well after judgment, in any suit, plea, record or process given, as before judgment, as long as the same record and process is before them.

Amendment may be made after judgment.

SEC. 2. The court in which any record, process, declaration, count, plea, warrant of attorney, writ, pannel or return is or may be, while the same remains before them, shall have power to examine such records, processes, declarations, counts, pleas, warrants of attorney, writs, pannels and returns, by them and their clerks, and amend (in affirmance of judgments of such records and processes) all that which, to them in their discretion, seemeth to be misprision of the clerks therein; so that by such misprision of the clerks, no judgment shall be reversed or annulled. And if any record, process, declaration, count, plea, warrant of attorney, writ, pannel or return be certified defective, otherwise than according to the writing which thereof remaineth in the offices, courts or places from whence they are certified, the parties, in affirmance of the judgments of such records and processes, shall have advantage to allege that the same writing is variant from the said certificates: and that being found and certified, the same variance shall be, by the said court, reformed and amended according to the first writing.

Power of court to amend pleadings.

SEC. 3. The courts before whom any misprision or default is, or shall be found, in any record or process, which is, or hereafter shall be depending before them, as well by way of appeal or error, as otherwise, or in the returns (the same made or to be made by sheriffs, coroners or any other) by misprision of the clerk of any of the said courts, or by misprision of the sheriffs, under-sheriffs or deputies, coroners or their clerks, or other officers, clerks, or other ministers whatsoever, shall have power to amend such defaults or misprisions according to their discretion, and, by examination thereof by the said courts, to be taken when they shall think needful; and all such amendments may be made as well after a judgment given upon verdict, confession, *nihil dicit*, or *non sum informatus*, as upon matter of law pleaded.

Courts may correct misprisions of sheriffs and others.

SEC. 4. For errors assigned, or to be assigned in any record, process, warrant of attorney, writ, original or judicial, pannel or return, for that in any places of the same there be erasures or interlineations, or that there be any addition, subtraction or diminution of words, letters or titles, or parcels of letters, found in any such record, process, warrant of attorney, writ, pannel or return, no judgment, or record or decree, shall be reversed or annulled.

Judgments not to be reversed for erasures or interlineations.

SEC. 5. Record and process, real or personal or mixed, whereof judgment or decree shall be given and enrolled, or things touching such pleas, shall in no wise be amended or impaired by new entering of the clerks, either by the record of things certified, in no term subsequent to that in which such judgment or decree is or shall be given and enrolled.

New entries of clerks not to impair or amend pleas, &c.

SEC. 6. If any issue hath been, or shall be tried by any court or jury, and be found for either party, in any court of record, then the court by whom judgment ought to be given, shall proceed

and give judgment in the same, any misleading, lack of color, insufficient pleading or jeofail or any miscontinuance, discontinuance, misconceiving of process, misjoining of the issue, lack of warrant of attorney, or any other default or negligence of any of the parties, their counsellors or attorneys to the contrary notwithstanding; and the said judgments thereof, so to be had and given, shall stand in full strength and force; to all intents and purposes, according to the said verdict or finding, without any undoing the same by appeal, writ of error or false judgment, in like form as though no such default or negligence had ever been had or committed.

SEC. 7. If a verdict of a court or jury shall hereafter be given, for either party in any court of record, the judgment thereupon shall not be stayed or reversed by any default of form, or lack of form in any writ, original or judicial, count, declaration, plaint, bill, suit or demand, for want of any writ, or by reason of any imperfect or insufficient return of any sheriff or other officer, or for want of any warrant of attorney, or by reason of any manner of default in process, upon, or after any aid-prayer or voucher; nor shall any such record or judgment after verdict, to be given hereafter, be reversed for any of the defects or causes aforesaid.

SEC. 8. If any verdict be rendered by the court or jury, for either party, in any court of record, the judgment thereupon shall not be stayed or reversed by reason of any variance in form only, between the original writ or process and the declaration, petition, plaint or demand, or for lack of an averment of any life or lives of any person or persons, so as upon examination, the said person be found to be in life, or by reason that any of the persons in whose favor the verdict is rendered is an infant and appeared by attorney.

SEC. 9. If any verdict shall hereafter be given by a court or jury for either party, in any court of record, judgment thereon shall not be stayed or reversed for any default in form or lack of form, or by reason that there are not pledges or but one pledge to prosecute, returned upon the original writ, or because the name of the sheriff is not returned upon the original writ or process, or for default of entering pledges upon any petition, or declaration, or for default of alleging the bringing into court, any bond, bill, indenture or other deed or writing mentioned in the declaration or other pleading, for default of allegation of bringing into court letters testamentary or of administration, or by reason of the omission of the words "with force and arms," or "against the peace," or for, or by reason of mistaking the christian or surname of the plaintiff or defendant, demandant or tenant, sum or sums of money, day, month or year, by the clerk, in any bill, petition, declaration or pleading, where the right name, surname, sum, day, month or year, in any writ, record or proceeding, or on the same record where the mistake is committed, is, or are once truly and rightly alleged, whereunto the party might have demurred and shown the same for cause, nor for want of the averment or words "and this he is ready to verify," or "and this he is ready to verify by the record," or for not alleging, "as appears by the record," or that there was no right venue, so as the cause was tried by a jury of the proper county, or place where the action is laid, nor shall any judgment after verdict be reversed, for want of entering that the person

Judgments not to be reversed, for want of certain allegations.

Or for any variance or lack of averment.

After verdict judgment not to be reversed for want of form, &c.

After verdict judgment not to be stayed by mispleadings or other errors in pleadings.

against whom such judgment is given, "be in mercy," or "be taken," or by reason that the words "be taken," are entered for "be in mercy," or that the words "be in mercy," for "be taken," nor for that in the judgment "it is granted" are entered for "it is considered," nor for that the increase of costs, after the verdict in any action, are not entered at the request of the party for whom judgment is given, nor by reason that the costs on any judgment are not entered to be by consent of the plaintiff; but all such omission, variance, defects and all other matters of the like nature, not being against the right of the matters of the suit, nor whereby the issue or trial is altered, shall be amended by the courts, where such judgments are or shall be given, or whereunto the record is or shall be removed by appeal or writ of error.

SEC. 10. Where any demurrer shall be joined, and entered in any action or suit, in any court of record, the judges shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission or defect for want of form in any writ, return, plaint, declaration or other pleading, process or course of proceeding whatsoever, except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as cause of the same, notwithstanding that such imperfection, omission or defect might heretofore have been taken to be matter of substance, so as sufficient matter appear on the said pleadings upon which the court may give judgment according to the very right of the cause; and therefore no advantage or exception shall be taken of or for an immaterial traverse, of or for default of entering pledge upon any petition or declaration, or for the default of alleging the bringing into court any bond, bill, indenture or writing mentioned in the declaration or other pleadings, or of, or for the default of alleging the bringing into court of letters testamentary or of administration, or of, or for the omission of the words "with force and arms," and "against the peace," or either of them, or of, or for want of the averment or words, "and this he is ready to verify," or, "and this he is ready to verify by the record," or of, or for not alleging "as appears by the record," but the court shall give judgment according to the very right of the cause as aforesaid, without regarding any such imperfection, omissions and defects, or other matter of like nature, except the same shall be specially and particularly set down and shown for cause of demurrer: and no judgment shall be reversed for any such imperfection, omission, defect or want of form, except such only as are before excepted. And after demurrer joined, the court before whom the same shall be pending may, from time to time, amend all and every such imperfection, omission, defect and want of form as are before mentioned, other than those only which the party demurring shall specially and particularly set down, together with his demurrer as aforesaid.

SEC. 11. Every thing herein before contained shall extend to all judgments which shall be entered upon confession, "nil dicit," or "non sum informatus," in any court of record; and no such judgment shall be reversed; nor any judgment upon any writ of enquiry of damages executed thereon shall be stayed or reversed

On demurrers court to decide only the causes set forth by the party demurring.

Certain defects not causes of demurrer,

except specially set forth.

Other defects may be amended before judgment.

Judgments by default or confession not to be reversed for defects which would have

been cured by verdict. for, or by reason of any imperfection, omission, defect, matter or thing which would have been aided and cured by this act in case a verdict had been given in such action or suit, so there be an original writ, duly issued according to law.

Writs of mandamus and quo warranto embraced in this act. SEC. 12. This act shall extend to all suits in any court of record for the recovery of any debt due the state, or any duty or revenue thereto belonging, and also to all writs of mandamus and informations of the nature of *quo warranto* and proceedings thereon.

Writs of error may be amended. SEC. 13. All writs of error, wherein there shall be any variance from the original record, or any other defect, may and shall be amended, and made agreeable to such record by the respective courts where such writs of error are or shall be made returnable.

Provisions of this act not extended to qui tam or criminal cases. SEC. 14. No part of this act shall extend to any indictment or presentment for any criminal matter or process upon the same; nor to any writ, action, or information upon any popular or penal statute; nor to any outlaw, or process thereupon in order thereunto.

Acts repealed. SEC. 15. All acts and parts of acts coming within the purview of this act are hereby repealed: *Provided*, no defect in any proceeding heretofore had shall be cured, or affected by the repealing clause of this act. This act to take effect on the first day of June next.

APPROVED, Jan. 11, 1827.

APPRENTICES.

AN ACT respecting Apprentices.

In force 1st June, 1827.

Males under 21, and females under 18 may be apprenticed with their own and the consent of their parent or guardian. SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That if any male person within the age of twenty-one years, or female within the age of eighteen years, now is, or shall hereafter be bound by an indenture of his or her own free will and accord, and by and with the consent of his or her father, or in case of the death of his or her father, with the consent of his or her mother or guardian, to be expressed in such indenture, and signified by the signature and seal of such parent or guardian affixed to such indenture, and not otherwise, to serve as a clerk, apprentice or servant in any art or mystery, service, trade, employment, manual occupation or labor, until he or she arrive, if male, to the age of twenty-one, if female to the age of eighteen years, as the case may be, or for a shorter term, then the said clerk, apprentice or servant so bound as aforesaid, shall serve accordingly. *Provided*, That in all cases of illegitimate children, the mother, or in case of her death, the guardian shall be considered the proper person to give the consent required in this section, and, *provided further*, that it shall be lawful for any male infant under the age of twenty-one years, or any female under the age of eighteen years, and who shall have no parent or guardian living in this state, or whose parents shall be dead, by and with the approbation of the judge of probate, or of any two justices of the peace of

Mother the guardian of illegitimate children.

Infants having no parents or guardians may bind

the county where such infant shall reside, to bind himself or herself as a clerk, apprentice or servant as aforesaid, which approbation shall be endorsed on the indenture, and every such indenture shall be valid and binding; and one copy thereof shall be filed in the office of the judge of probate for safe keeping.

SEC. 2. When the father is not in legal capacity to give the consent aforesaid, or when he shall have wilfully abandoned his family for the space of six months without making suitable provision for their support, or has become an habitual drunkard, the mother shall have the same power to give such consent as if the father were dead; which facts of incapacity, desertion and drunkenness shall be decided and found in the court of probate by a jury of the vicinage, empannelled for that purpose, before the said indenture shall take effect; and an endorsement on the said indenture under the seal of the court, that the same are approved by the court, shall be sufficient evidence of the mother's power to give such consent as aforesaid. But if the jury so empannelled as aforesaid shall not find the facts charged, to wit: incapacity, desertion or drunkenness, then the person at whose instance such proceedings may have been had, shall pay all costs attending the same, to be collected by the court of probate as costs in other cases.

SEC. 3. It shall be lawful for any two overseers of the poor, in any county of this state, by and with the consent of the judge of probate, or for any two justices of the peace, in any county of this state, to bind out any poor child, who is or shall be chargeable to the county, or shall beg for alms, or shall be unable by reason of infancy or inability, to take care of and support himself or herself, or whose parents are or shall be chargeable to the county, or shall beg for alms, or the child of any poor and needy family, when the father is an habitual drunkard, or otherwise unable or unwilling to support his family, or if there be no father, where the mother is of bad character, or suffers her children to grow up in habits of idleness without any visible means of obtaining an honest livelihood, to be apprentices as aforesaid, according to their degree and ability, until such child, if a male, shall arrive at the age of twenty-one years; if a female to the age of eighteen years, and the indentures or articles of agreement for binding any such infant shall be as effectual to all intents and purposes, as if such infant had bound himself or herself. One copy of such indentures, or articles of agreement, shall be filed in the office of the judge of probate for safe keeping. And it shall be the duty of the justices of the peace or judge of probate, to see that the terms of the said indentures and contracts be fulfilled, and that such child be not ill used.

SEC. 4. In all indentures and contracts hereafter made, for the binding or putting out of any child as a clerk, apprentice or servant, there shall always be inserted among other covenants, a clause to the following effect: "That the master or mistress, to whom such child shall be bound as aforesaid, shall cause such child to be taught to read and write, and the ground rules of arithmetic; and shall also give unto such apprentice, a new bible, and two new suits of clothes, suitable to his or her condition, at the expiration of his or her term of service:" *Provided, however*, That when such apprentice is a negro or mulatto child, it shall not be necessary to insert

themselves with the approbation of the judge of probate or two justices of the peace.

If the father is incapacitated the mother may bind the children. The fact of incapacity to be tried by a jury.

Provide as to costs.

When overseers of the poor may bind poor children.

Indentures to be filed in the probate office.

Covenants to be inserted in indentures.

Provide as to negroes and mulattos.

in said indentures, that such negro or mulatto shall be taught to write, or the knowledge of arithmetic.

Age to be inserted in indentures. SEC. 5. The age of any infant who shall be bound to serve as a clerk, apprentice or servant, according to the preceding sections, shall be inserted in his or her indentures.

Indentures taken contrary to this law to be void. SEC. 6. All indentures, covenants, promises, and bargains, for having, taking or keeping any clerk, apprentice or servant, hereafter to be made or taken, otherwise than is limited and prescribed by this act, shall be utterly void in law, as against such clerk, apprentice or servant.

The judge of probate or any two justices of the peace to receive complaints of apprentices, SEC. 7. The judge of probate, or any two justices of the peace, shall at all times receive the complaints of apprentices, who reside within the jurisdiction of such judge or justices, against their masters or mistresses, alleging undeserved, or immoderate correction, unwholesome food, insufficient allowance of food, raiment or lodging, want of sufficient care or physic in sickness, want of instruction in their trade or profession, or the violation of any of the agreements or covenants in indentures of apprenticeship contained, or that he or she is in danger of being removed out of the jurisdiction of this state; and shall cause such masters or mistresses to be summoned before them, and shall on the return of the summons, whether such master or mistress appear or not, hear and determine such cases, in a summary way, and make such order thereon, as in the judgment of the said judge of probate, or two justices of the peace, will relieve the party injured in future; and shall have authority, if said judge or two justices think proper, to discharge such apprentice of and from his or her apprenticeship or service. And in case any money or other thing, shall have been paid, given, or contracted or agreed for by either party in relation to the said apprenticeship or service, shall make such order concerning the same, as the said judge or justices of the peace shall deem just and reasonable. And if the said apprentice so discharged shall have been bound originally by a judge of probate or two justices of the peace, it shall be the duty of the court granting the discharge, again to bind him or her, if said court shall judge proper.

and summon the master or mistress to appear before them.

But if such apprentice was bound by the judge of probate or justices of the peace, he may be rebound.

Upon complaint of master or mistress the judge of probate or two justices of the peace may issue a warrant against the apprentice, and may order him to make restitution. SEC. 8. The said judge of probate, or any two justices of the peace shall, on the complaint of masters or mistresses, issue a warrant against any apprentice for desertion, without good cause, or for any misdemeanor, miscarriage or ill behavior, and may punish such apprentice or servant according to the nature and aggravation of his or her offence, by imprisonment not exceeding ten days; and in addition to the above punishment, where the offence shall be desertion without good cause, the court may order the said apprentice or servant guilty thereof, to make restitution by the payment of a sum not exceeding eight dollars for each and every month he or she may be so absent, to be collected as other debts, after such servant or apprentice shall become of full age. The awarding of

Costs may be awarded.

Appeal allowed to the circuit court.

costs on proceedings under this and the preceding sections, shall be in the discretion of the court. An appeal to the circuit court from any decisions made under this or the preceding sections, shall be allowed to either party, upon the party appealing, entering into a bond, with good and sufficient security, in the penalty of one hundred dollars, conditioned to prosecute such appeal to effect, and to

abide by and perform the decision of the circuit court in the premises: which court shall hear and decide such appeal, upon the same principles as the said judge of probate or justices ought to have heard and decided the original complaint. The decision of the circuit court shall be final and conclusive in the premises, and shall not be subject to appeal or writ of error. The bond above mentioned, shall be entered into before the clerk of the circuit court, who shall thereupon proceed in said appeal as is directed by law, in cases of appeal from the decisions of justices of the peace in other cases.

Its judgment final.

SEC. 9. Every person who shall counsel, persuade, entice, aid or assist any clerk, apprentice or servant, to run away or absent himself or herself from the service of his or her master or mistress, or to rebel against, or assault his or her master or mistress, shall forfeit and pay a sum not less than twenty, nor more than five hundred dollars, to be sued for and recovered by action on the case, with costs, by such master or mistress, in any court having jurisdiction thereof.

Penalty for advising apprentice to run away or assault his master.

SEC. 10. Every person who shall entertain, harbor or conceal any clerk, apprentice or servant, knowing such clerk, apprentice or servant to have run away, or to have absented himself or herself from the service of his or her master or mistress without leave, shall forfeit and pay one dollar for every day's entertaining, harboring or concealing as aforesaid; to be sued for and recovered by action of debt with costs, by such master or mistress, in any court having jurisdiction thereof.

Penalty for harboring runaway apprentices.

SEC. 11. The executor or executors who are, or shall be by the last will and testament of a father, directed to bring up his child or children to some trade or calling, shall have power to bind such child or children, by indenture, in like manner as the father if living might have done, or shall raise such child or children according to such directions.

Executor may bind out in a certain case.

SEC. 12. It shall not be lawful for any master or mistress, to remove any clerk, apprentice or servant bound to him or her as aforesaid out of this state; and if at any time it shall appear to any judge, or justice of the peace, upon the oath of any competent person, that any master or mistress is about to remove, or cause to be removed, any such clerk, apprentice or servant out of this state, it shall be lawful for such judge or justice, to issue his warrant, and to cause such master or mistress to be brought before him, and if upon examination, it appear that such apprentice, clerk or servant, is in danger of being removed without the jurisdiction of this state, the judge or justice may require the master or mistress to enter into recognizance, with sufficient security, in the sum of one thousand dollars, conditioned that such apprentice, clerk or servant, shall not be removed without the jurisdiction of this state, and that the said master or mistress will appear with the apprentice, clerk or servant before the circuit court, at the next term thereof, and abide the decision of the court therein; which recognizance shall be returned to the circuit court, and the said court shall proceed therein, in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance, and otherwise proceed according to law and justice. But if the master or

Not to be removed out of the state.

Power and duty of judge of probate and justices of the peace in such cases.

mistress, when brought before any judge or justice, according to the provisions of this section, will not enter into a recognizance as aforesaid, if required so to do, it shall be lawful for such judge or justice to commit the custody of such apprentice, clerk or servant to some other proper person, who will enter into recognizance as aforesaid.

Master or mistress may surrender apprentice.

SEC. 13. Whenever any master or mistress of any clerk, apprentice or servant, bound by the court as aforesaid, shall wish to remove out of this state, or to quit his or her trade or business, it shall and may be lawful for him or her, to appear with his or her apprentice, before the probate court of the proper county; and such court shall have power if they deem it expedient, to discharge such clerk, apprentice or servant from the service of such master or mistress, and again bind him or her if necessary, to some other person of the same trade, business or employment.

Bound to two or more, in case of death of one, contract remains to and against survivor.

SEC. 14. When any person shall become bound as clerk, apprentice or servant, according to the provisions of this act, to two or more persons, and one or more of them die before the expiration of the term of service, the indentures and contracts shall survive to, and against such survivor or survivors; and in case of the death of all the masters or mistresses in any such indenture or contract named, before the expiration of the term of service, the executors or administrators shall bring the indenture and contract, and the clerk, apprentice or servant therein named, before the court of probate of the proper county, and such court shall if necessary, again bind such apprentice, clerk or servant to some other person.

Duty of executors, &c. in such cases.

If apprentice run away or absent himself, master may recover damages after full age of apprentice.

SEC. 15. Any clerk, apprentice or servant, bound according to the provisions of this act, who shall absent himself or herself from the service of his or her master or mistress, without leave first obtained, or who shall run away, so that the master or mistress shall be deprived of his or her service, during the remainder of the term, or any part thereof, for which he or she was bound to serve, then and in that case, it shall and may be lawful for the master or mistress of such clerk, apprentice or servant, to have an action on the case, in any court of competent jurisdiction against such clerk, apprentice or servant, after he or she arrives at full age, for the damage that such master or mistress may have sustained, by reason of the absence of such clerk, apprentice or servant: *Provided*, That such action shall be brought within six years, after such clerk, apprentice or servant, shall arrive at full age.

Provido.

SEC. 16. All acts and parts of acts coming within the purview of this act, are hereby repealed: *Provided*, That nothing herein contained, shall be so construed as to affect or impair the obligation of any existing indentures or contracts whatever. This act to take effect on the first day of July next.

APPROVED, Dec. 30th, 1826.

APPORTIONMENT.

AN ACT to apportion the Representation of the several Counties in force in this State.

In force Jan. 14, 1836.

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly*, That until the next census, as provided by the constitution shall have been taken and an apportionment made thereon, the following shall be the ratio of representation for this state, viz: that each seven thousand white inhabitants shall be entitled to one senator, and each three thousand white inhabitants shall be entitled to one representative, to be apportioned and divided as follows, to-wit: The counties of Alexander and Union, one representative each, and the two together one senator; the counties of Johnson and Pope, one representative each, and the two together one senator; the county of Gallatin, three representatives and one senator; the counties of Hamilton and Jefferson, one representative each, and the two together one senator; the county of Franklin, two representatives, the county of Jackson, one representative and the two together one senator; the counties of Washington and Perry, one representative each, and the two together one senator; the county of White, two representatives and one senator, the counties of Edwards, Wayne and Wabash, one representative each, and the three together one senator; the county of Lawrence shall, at the next general election, elect two representatives, and at the succeeding biennial election one representative; and at the said first general election, the counties of Crawford and Jasper shall elect one representative, and at the succeeding biennial election two representatives together, and so on alternately thereafter, until another apportionment shall be made, and the three counties together one senator; the county of Edgar, two representatives, and one senator; the county of Coles, two representatives, the county of Clark, one representative, and the two together one senator; the county of Vermillion three representatives, the county of Champaign, one representative, and the two together one senator; the county of Madison, three representatives and one senator; the county of St. Clair, three representatives and one senator; the county of Monroe, one representative, and the three last mentioned counties together one senator; the county of Randolph, two representatives and one senator; the counties of Clinton and Marion, one representative each, and the two together one senator; the counties of Bond and Montgomery, one representative each, and the two together one senator; the counties of Fayette and Effingham, together, two representatives, the county of Clay, one representative, and the three together one senator; the county of Shelby, one representative and one senator; the county of Greene, three representatives and one senator; the counties of Calhoun and Greene, one representative and one senator together; the county of Macoupin one representative and one senator; the county of Morgan, six representatives and three senators; the county of Sangamon, seven representatives and two

senators; the county of Tazewell, two representatives and one senator; the county of McLean, two representatives, the county of Macon one representative, and the two together one senator; the county of Adams, two representatives and one senator; the county of Pike, two representatives and one senator; the county of Schuyler, two representatives and one senator; the county of Fulton, two representatives and one senator; the counties of McDonough and Hancock, one representative each, and the two together one senator; the counties of Warren, Knox and Henry, the three together one representative and one senator; the county of Cook, three representatives and one senator; the county of La Salle, one representative and one senator; the county of Iroquois shall vote for the senator to be elected in La Salle county, and elect one representative alone, the counties of Putnam and Peoria, one representative each, and the two together one senator; the counties of Jo Daviess, Mercer and Rock Island, together, two representatives and one senator.

Counties joined together made districts.

SEC. 2. Whenever, in the preceding section, two or more counties are joined together for the purpose of electing representatives or senator, they shall form, and are hereby constituted, districts for that purpose.

Clerks' duty.

SEC. 3. At all future elections for senator or representatives the clerks of the county commissioners' courts of the counties of Alexander and Union, shall meet at the seat of justice of Union county, to compare the returns of election for senator in said district; the district composed of the counties of Johnson and Pope, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Pope county, to compare the returns of elections for senator for said district; the district composed of the counties of Jefferson and Hamilton, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Jefferson county, to compare the election returns for senator in said district; the district composed of the counties of Franklin and Jackson, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Franklin county, to compare the election returns for senator in said district; the district composed of the counties of Washington and Perry, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Washington county, to compare the election returns for senator in said district; the district composed of the counties of Edwards, Wayne, and Wabash, the clerks of the county commissioners' courts of said counties shall meet at the seat of justice of Edwards county, to compare the election returns for senator in said district; the representative district composed of the counties of Crawford and Jasper, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Crawford county to compare the election returns for representatives in said district; the senatorial district composed of the counties of Lawrence, Crawford, and Jasper, the clerks of the county commissioners' courts of said counties shall meet at the seat of justice of Crawford county, to compare the election returns for senator in said district; the district composed of the counties of

Coles and Clark, the clerks of the county commissioners' courts of said counties shall meet at the seat of justice of Coles county to compare the election returns for senator in said district; the district composed of the counties of Vermillion and Champaign, the clerks of the county commissioners' courts of said counties shall meet at the seat of justice of Vermillion county, to compare the election returns for senator in said district; the district composed of the counties of Madison, St. Clair and Monroe, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of St. Clair county, to compare the election returns for senator in said district; the district composed of the counties of Clinton and Marion, the clerks of the county commissioners' courts of said counties shall meet at the seat of justice of Clinton county, to compare the election returns for senator in said district; the district composed of the counties of Bond and Montgomery, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Montgomery county, to compare the election returns for senator in said district; the senatorial district, composed of the counties of Fayette, Effingham and Clay, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Effingham county, to compare the election returns for senator in said district; the representative district composed of the counties of Fayette and Effingham, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Effingham county to compare the election returns for representatives in said district; the district composed of the counties of Greene and Calhoun, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Greene county, to compare the election returns for senator and representatives in said district; the district composed of the counties of McLean and Macon, the clerks of the county commissioners' courts of said counties shall meet at the seat of justice of McLean county, to compare the election returns for senator in said district; the district composed of the counties of McDonough and Hancock, the clerks of the county commissioners' courts of said counties shall meet at the seat of justice of McDonough county, to compare the election returns for senator in said district; the district composed of the counties of Warren, Knox and Henry, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Knox county, to compare the election returns for senator and representatives in said district; the district composed of the counties of La Salle and Iroquois, the clerks of the county commissioners' courts of said counties shall meet at the seat of justice of La Salle county, to compare the election returns for senator in said district; the district composed of the counties of Putnam and Peoria, the clerks of the county commissioners' courts of said counties shall meet at the seat of justice of Peoria county to compare the election returns for senator in said district; the district composed of the counties of Jo Daviess, Mercer, and Rock Island, the clerks of the county commissioners' courts of said counties, shall meet at the seat of justice of Jo Daviess county to compare the election returns for senator and representatives of said district.

SEC. 4. The clerks of the county commissioners' courts above named, shall meet at the several places before mentioned, within fifteen days next after any election for senator or representatives, in any of the said districts, for the purpose of comparing the votes given at such election.

SEC. 5. Within the first thirty days of the session of the senate, the additional senator to be elected from Morgan county, and the senator to be elected from Cook county, and the senator to be elected from Pike county, and the senator to be elected from Macoupin county, and the senator to be elected from Fulton county, and the senators to be elected from the districts composed of the counties of La Salle and Iroquois, McLean, Macon, Calhoun, Greene, Putnam, Peoria, Madison, St. Clair, Monroe, Hancock, McDonough, Warren, Knox, Henry, Coles, Clark, Washington, and Perry, shall proceed to divide by lot their said number into two classes, the first class of which shall serve until the expiration of two years from the first Monday in August, eighteen hundred and thirty-six, and the second class shall serve four years from the first Monday in August, eighteen hundred and thirty-six; and in case of any vacancy occurring in any of the aforesaid offices, the same shall be filled in the manner prescribed by law for filling vacancies in the General Assembly.

APPROVED, Jan. 14, 1836.

ARBITRATIONS AND REFERENCES.

AN ACT regulating Arbitrations and References.

In force
July 1,
1827.

Disputants
may agree
to submit to
arbitrators,
&c.

By submis-
sion in
writing and
rule of
court.

Or by per-
sonal ap-
pearance &
submission
in open
court.

Rule.

Judgment
on award.

SEC. 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, That all persons desirous to end any dispute or controversy by arbitration, for which there is no other remedy but by action at law, or suit in equity, may agree that their submission to arbitration shall be made a rule of the circuit court, and may insert such their agreement in the submission, or in the condition of the bond or promise; which agreement, on producing an affidavit of the due execution thereof, and filing it in the court, may be entered of record, and a rule of court shall thereupon be made, that the parties shall submit to, and be finally concluded by such arbitration; or such persons desirous to end any dispute or controversy as aforesaid, may personally appear before the circuit court, and acknowledge that they have mutually agreed to refer all their matters of difference, or any particular dispute, to the arbitrament of certain persons by them agreed on and named: on their desiring such submission to be made a rule of court, the same may be entered of record, and a rule of court shall be made, that the parties shall submit to and be finally concluded by such arbitration. In either of the above cases, when the award shall be for the payment of money only, the same being returned into, and accepted by the court, judgment shall be rendered thereon

for the party in whose favor the award is made, to recover the sum awarded, to be paid to him, together with the costs of arbitration and the costs of court, and execution may issue thereon accordingly. No judgment shall be entered on any such award, unless it shall appear to the court that a copy of the award and notice to appear and shew cause why judgment should not be entered on the same, has been previously served on the party to be charged with the judgment, at least four days before the motion for judgment shall be made: no judgment shall be entered on motion as aforesaid, after one year from the time of making the award.

SEC. 2. When the award shall be for the performance of any thing other than the payment of money, the same being returned into and accepted by the court as aforesaid, obedience thereto may be enforced in the said court, by attachment, in the same manner, as obedience may be compelled to any other rule of court.

SEC. 3. Any arbitration, umpirage or award, procured by corruption or undue means, shall be judged void, and may be set aside in law or equity; in equity, by proceedings on original bill, and at law, on motion in the court where submission is made a rule of court, or where any suit or proceedings shall be instituted on the arbitration bond, submission or award. Complaint must be made of such corruption or undue practice, before final judgment upon the said bond, submission or award.

SEC. 4. When any personal action shall be pending in the circuit court, and the parties desire to refer the same, it may be done by a rule of the court, the report of the referees being approved by the court, and entered of record, shall have the same effect as the verdict of a jury, and the like judgment shall be entered upon it as if the same finding had been by a jury; the costs of the reference shall be taxed with the other costs of the suit.

SEC. 5. The several clerks of the circuit courts and the justices of the peace in their several counties, may issue subpoenas for the attendance of witnesses before arbitrators and referees: If any witness, after being duly summoned, shall fail to attend, the arbitrators or referees may issue an attachment to compel his attendance, and the said witness shall moreover be liable to the party for refusing to attend the same as in trials at law. The arbitrators and referees may administer oaths and affirmations to witnesses; may punish contempts committed in their presence during the hearing of a cause, the same as a court of record; may continue the hearing of a cause from time to time upon good cause shewn, and may admit depositions to be read in evidence, the same as in trials at law.

SEC. 6. Each arbitrator and referee shall before he proceeds to the duties of his appointment take an oath or affirmation, faithfully and fairly to hear and examine the cause in question, and to make a true and just report or award, (as the case may be,) according to the best of his skill and understanding; which oath or affirmation, any judge or justice of the peace of this state is authorized and required to administer.

SEC. 7. Each arbitrator and referee shall be allowed for every day's attendance to the business of his appointment, one dollar, to be paid in the first instance, by the party in whose favor the award or report shall be made, but to be recovered of the other party

No judgment shall be entered unless it appear that a copy of the award and notice to the opposite party four days before motion for judgment.

Obedience may be enforced.

An award or umpirage procured by corruption, void.

Objection to be made before judgment.

How actions pending may be referred.

Process may issue for witnesses to attend before arbitrators.

Penalties for witnesses refusing.

Arbitrators may administer oaths, and punish for contempt. May continue cause.

Arbitrators to be sworn.

Their compensation.

with the other costs of suit, if the award or report shall entitle the prevailing party to recover costs. Witnesses shall receive the same fees for attendance at arbitrations and references, as shall be allowed them in the circuit courts. Sheriffs, constables, clerks and justices of the peace, shall be entitled to the same fees for services performed in relation to any arbitration or reference, as shall be allowed by law for the like services in their respective courts.

Witnesses, sheriffs, and other officers allowed fees.

Former act repealed.

SEC. 8. The act entitled "An act authorizing and regulating arbitrations," approved February 25, 1819, is hereby repealed.

This act to take effect from the first day of July next.

APPROVED, January 6, 1827.

In force March 1, 1833.

AN ACT to amend an act, entitled "An Act regulating arbitrations and referencs," approved January 6, 1827.

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That whenever it shall appear in any cause pending in any of the circuit courts of this state, by the oath of either party, or otherwise, that the trial of the same will require the examination of a long account on either side, such court may on application, and by and with the consent of both parties, order such cause to be referred to three impartial and competent persons.

Court may appoint referees on application of parties.

When parties agree on referees.

SEC. 2. If the parties agree on their persons as referers, such persons shall be appointed by the court. If they disagree, each party shall name one, and the court shall appoint the persons so nominated, and such other person as the court shall designate.

Duty of.

SEC. 3. The referees appointed in pursuance of the foregoing provisions, shall proceed with diligence, to hear and determine the matters in controversy. They shall appoint a place and time for hearing, and adjourn the same from time to time, as may be necessary. And on the application of either party, and for good cause, they may postpone such hearing, to a time not extending beyond the next term of the court in which the said suit is pending.

Shall be sworn.

SEC. 4. Before proceeding to hear any testimony in the cause, the referees shall be sworn, faithfully and fairly to hear, examine, and determine the cause, according to the principles of equity and justice, and to make a just and true report according to the best of their understanding, which oath may be administered by any justice of the peace, or clerk of the circuit court, in which the suit is pending.

May compel attendance of witnesses.

SEC. 5. Witnesses may be compelled to appear before such referees, by subpoenas issuing out of the court, in which the cause is pending, in the same manner and with like effect, as in cases of trials in such court.

Any of referees may administer oaths.

SEC. 6. Any one of the referees may administer the necessary oath to the witnesses produced before them, for examination. A majority of the referees may meet together, and hear the proofs

and allegations of the parties, and a report by any two of such shall be valid.

SEC. 7. The referees may be compelled by the order of the court in which the cause is pending, to proceed to a hearing thereof, and to make a report of the amount they find due to either party.

Court may compel referees to act.

SEC. 8. An entry of such reference, shall be made on the record, and day shall be given to the parties, from time to time, until the referees report, or they be thereof discharged, on filing such report. Judgment shall be entered thereon, in the same manner, and with like effect, as upon the verdict of a jury; the cost of reference shall be taxed, as other cost of the suit. This act to take effect from and after its passage.

Reference to be entered of record.

Costs.

APPROVED, 1st March, 1833.

ATTACHMENTS.

AN ACT concerning Attachments.

In force June 2, 1833.

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That if any creditor or his agent shall make complaint on oath or affirmation to the clerk of the circuit court of any county in this state, that his or her debtor is about to depart this state, or has departed from this state, with the intention in either case of having his effects and personal estate removed without the limits of this state, or stands in defiance of any officer, authorized to arrest him or her, on civil process, so that the ordinary process of law cannot be served on such debtor; and if such creditor or his agent shall also make oath or affirmation, that such debtor is indebted to such creditor in a sum exceeding twenty dollars of lawful money of the United States, specifying the amount and nature of such indebtedness, it shall be lawful for such creditor to sue or cause to be sued out of the office of the said clerk, a writ of attachment, directed to the sheriff of the county in which he is clerk, returnable as other writs are, to the circuit court for said county, commanding him to attach the said debtor, by all and singular his or her lands and tenements, goods and chattels, rights and credits, moneys and effects of what nature soever, or so much thereof as will be sufficient to satisfy the debt so sworn to, with interest and costs of suit, in whose soever hands or possession the same may be found in his bailiwick. It shall be lawful for such sheriff to serve and levy such attachment upon the lands and tenements, goods and chattels, rights and credits, money and effects of such debtor, within his bailiwick, whenever the same may be found, or in the hands of any person indebted to, or having any effects of such debtor, and to summon such person as garnishee, to appear at the court to which the attachment is returnable, there to answer upon oath or affirmation what amount he or she is indebted to the defendant in the attachment, or what effects of such defendant, he

On complaint of creditor attachment may issue.

Nature of complaint.

Substance of writ of attachment.

How served.

or she hath in his or her hands, or had or was indebted at the time of serving such attachment, and what effects or debts of the defendant there are in the hands of any other person or persons, to his or her knowledge or belief; which attachment being duly returned served, and setting forth in what manner such service has been made, and if on a garnishee, the court may thereupon compel such garnishee to appear and answer as aforesaid; there shall be allowed to such garnishee, out of the effects attached, a reasonable sum for his or her attendance.

Returned.

Allowance to garnishee.

SEC. 2. When any person who shall be an inhabitant of any state, territory, or country, without the limits of this state, so that he or she cannot be personally served with process, shall be indebted to any person a resident of this state, and hath any estate, real or personal, within the same, any of the said clerks may issue an attachment against such estate of such foreign person under the rules, restrictions, and regulations in this act contained, so far as the same shall be applicable.

Non-resident debtors.

When two or more non-residents are jointly indebted.

SEC. 3. When two or more persons not residing in this state, are jointly indebted, either as joint obligors, partners or otherwise, then the writ or writs of attachment shall and may be issued against the separate and joint estate of such debtors or any of them, either by their proper names or by or in the name or style of the partnership, or by whatever other name or names such joint debtors shall be generally reputed, known or distinguished within this state, or against the heirs, executors or administrators of them, or either or any of them; and the lands and tenements, goods and chattels, rights, credits, and effects of such debtors, or either or any of them, shall be liable to be seized and taken for the satisfaction of any just debt or other legal demand, and may be sold to satisfy the same. The oath or affirmation of non-residence and indebtedness shall be made before, and filed with the clerk of the circuit court of the county from whence the attachment issues, and shall also state the residence of the debtors.

Writ may issue against heirs, &c.

Oath.

Non-resident creditor.

SEC. 4. If the creditor or plaintiff in the attachment be absent from, or non-resident of this state, it shall and may be lawful for such creditor, by himself or agent, or attorney, to attach the estate and property of his debtor, both real and personal, that may be found in this state, in any or all of the cases provided for by this act; and the oath or affirmation required by any of the preceding sections, may be made by such agent or attorney, and the like proceedings may be had thereon, as if such oath or affirmation had been made by the creditor or plaintiff in proper person.

Oath may be made by agents.

Clerk before granting attachment shall take bond.

SEC. 6. Every clerk before granting an attachment as aforesaid, shall take bond and security from the party for whom the same shall be issued, his or her agent or attorney, payable to the defendant in double the sum for which the complaint shall be made, conditioned for satisfying all costs which may be awarded to such defendant, in case the plaintiff suing out the attachment therein mentioned shall be cast in the suit; and also all damages which shall be recovered against the plaintiff for wrongfully suing out such attachment; which bond, with affidavit or affirmation of the party complaining, his or her agent, or attorney, shall be filed in the office of the clerk granting the attachment. Every attachment

issued without a bond and affidavit taken and returned as aforesaid, is hereby declared illegal and void, and shall be dismissed.

Attachment issued without bond and affidavit void.

SEC. 7. To prevent errors in issuing attachments and taking bonds, the attachment and the condition of the bond shall be in the form, or to the effect following, viz:

"The people of the state of Illinois to the sheriff of _____ county, greeting: Whereas, A. B. (or agent or attorney of A. B. as the case may be,) hath complained on oath (or affirmation) to the clerk of the circuit court of _____ county, that C. D. is justly indebted to the said A. B. to the amount of _____ and oath (or affirmation) having been also made, that the said C. D. resides out of this state, or absconds, or conceals himself or herself, or stands in defiance of a civil officer authorized to arrest him or her with civil process, so that the ordinary process of law cannot be served upon him, or is about to depart this state with intention to have his effects and personal estate removed without the limits of the same, or has left the state with the intention of having his effects and personal estate removed therefrom (as the case may be) and the said _____ having given bond and security according to the directions of the act in such case made and provided: We therefore command you, That you attach so much of the estate, real or personal, of the said C. D. to be found in your county, as shall be of value sufficient to satisfy the said debt and costs according to the complaint: and such estate so attached in your hands to secure, or so to provide, that the same may be liable to further proceedings thereupon, according to law, at a court to be holden at _____ for the county of _____ upon the day of _____ next, so as to compel the said C. D. to appear and answer the complaint of the said A. B. and that you also summon _____ as garnishee, to be and appear at the said court on the said day of _____ next, then and there to answer to what may be objected against him, when and where you shall make known to the said court how you have executed this writ, and have you then and there this writ. Witness judge of the said court, this day of _____ in the year of our Lord," &c. which attachment shall be signed by the clerk, and the seal of the court affixed thereto.

Form of attachment.

"The condition of this obligation is such, that whereas the above bounden _____ hath, on the day of the date hereof, prayed an attachment at the suit of _____ against the estate of the above named _____ for the sum of _____ and the same being about to be sued out returnable on the day of _____ next, to the term of the court then to be holden: Now if the said _____ shall prosecute his suit with effect, or in case of failure therein shall well and truly pay and satisfy the said _____ all such costs in said suit, and such damages as shall be awarded against the said _____ his heirs, executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect." No attachment shall be abated or dismissed for want of form, if the essential matters expressed in the foregoing precedents be substantially set forth.

Want of form, not to vitiate attachment. Upon service of attachment, duty of officer.

SEC. 8. Upon the service of every writ of attachment, it shall be the duty of the officer serving the same, to take the estate and

property so attached into his possession, in whose custody or possession soever the same may be, and the estate and property shall remain in the safe keeping and care of the said officer, in order to answer and abide the judgment of the court, unless the person or persons in whose possession the same may be found, shall enter into bond and security to the officer to be approved by such officer, in double the sum for which such attachment shall have issued, with condition that the said estate and property shall be forthcoming to answer the judgment of the court in said suit.

May be replevied.

On defendants replevying, sheriff shall return the property.

Bond may be assigned.

Objections to sufficiency of bond, when to be made.

Remedy of sheriff.

Sheriff failing to take bond.

Rule may be entered.

Judgment against Sheriff.

Execution.

When served on garnishee.

SEC. 9. Upon the defendant or defendants replevying any attached effects, by giving bond and security, the sheriff or officer shall return such bond to the court, before whom the attachment is returnable, on the first day of the term thereof. If such bond shall be forfeited, the sheriff may assign such bond to the plaintiff in the attachment by a writing thereon, under his hand, in the presence of two or more credible witnesses, and after such assignment the plaintiff may bring a suit in his own name thereupon. If the plaintiff will not accept such assignment of such bond, and the court shall adjudge such security insufficient, such sheriff shall be subject to the same judgment and recovery, and have the same liberty of defence as if he had been made defendant in the attachment, unless good and sufficient security shall be given, and bond filed during the term of the court to which such attachment is returnable, at which term the objections to the sufficiency of the security taken, shall be made to entitle the party suing out the attachment, to proceed against the sheriff; and execution may issue thereupon as in other cases of judgment. And whenever the judgment of the plaintiff, or any part thereof, shall be paid or satisfied by any such sheriff, he shall have the same remedy against the defendant for the amount so paid by him, as is now provided by law for bail against their principal, where a judgment is paid or satisfied by them. He shall likewise have the same remedy on a bond of a garnishee, which shall be adjudged insufficient, as is or may be provided on bonds, or security given for the appearance of a defendant in a civil action.

SEC. 10. If the sheriff shall fail to return a bond taken by virtue of the provisions of this act, or shall have neglected to take one when he ought to have done so, in any attachment issued under any provisions of this act, the plaintiff in the attachment may cause a rule to be entered at any time during the two first days of the term, to which the writ is returnable, requiring the said sheriff to return the said bond; in case no bond has been taken, to shew cause why such bond was not taken. If the said sheriff shall not return the said bond within one day thereafter, or shew legal and sufficient cause why the said bond had not been taken, judgment shall be entered up against him for the amount of the plaintiff's demand, with costs of suit; execution may thereupon issue for the same, whenever judgment shall have been entered against the defendant in the attachment.

SEC. 11. When any attachment shall be issued out of the circuit court and levied or served on a garnishee, it shall be the duty of the sheriff to return the same if required by the plaintiff, and on return thereof, the clerk shall give notice for four weeks success-

ively in some newspaper published in this state most convenient to the place where the court is held, of such attachment, and at whose suit, against whose estate, for what sum, and before what court the same is pending, and that unless the defendant shall appear on the return day of such writ, judgment will be entered, and the estate attached will be sold: *Provided*, that in case of foreign attachment, if sixty days shall not intervene between the first insertion of such notice and the first term of the court, then the cause shall be continued until the next term of the court.

SEC. 12. On the return of any writ of attachment against a defendant, it shall be the duty of the clerk of the court in which the suit is pending, to give notice for four weeks successively in some newspaper published in this state, most convenient to the place where the court is held, of such attachment, and at whose suit, against whose estate, for what sum, and before what court the same is pending; and that unless the defendant shall appear, give bail, and plead within the time limited for his or her appearance in such case, judgment will be entered, and the estate so attached will be sold. If the defendant appear, put in sufficient bail, and plead as aforesaid, his estate so attached shall be liberated, and the garnishee or garnishees, if any, discharged.

SEC. 13. If any attachment as aforesaid shall be returned executed, and the estate attached shall not be replevied, or defence shall not be made as this act directs, the plaintiff shall be entitled to judgment for his whole debt and costs, having established the existence of such debt, by legal testimony, and may thereupon take execution for the same according to law, as provided in other cases in debt. All the estate attached and not replevied, shall be sold for, and towards satisfying the plaintiff's judgment in the same manner as such property is required to be when taken in execution on a writ of *fiery facias*. Where an attachment shall be returned served in the hands of any garnishee, it shall be lawful upon his or her appearance and examination in the manner as is by this act directed, to enter up judgment and award execution against every such garnishee, judgment having been first entered against the original debtor, for all sum or sums of money due from him or them, to the defendant in the attachment, or in his, her, or their custody, or possession, for the use of such original debtor, or so much thereof as shall be of value sufficient to satisfy the debt and costs of the complaint. All goods and effects whatsoever in the hands of any garnishee or garnishees belonging to such defendant, shall also be liable to satisfy such judgment.

SEC. 14. Where any garnishee shall be summoned by the sheriff or other officer in the manner aforesaid, and shall fail to appear and discover on oath or affirmation, as by this act is directed, it shall be lawful for the court after solemnly calling the garnishee, and such court is hereby authorized and required to enter a conditional judgment against such garnishee, and thereupon a *scire facias* shall issue against such garnishee, returnable to the next term of the court, to shew cause if any he have, why final judgment should not be entered against him, upon such *scire facias* being duly executed and returned; if such garnishee shall fail to appear, accordingly, and discover on oath or affirmation in the manner aforesaid,

Publication to be made for four weeks.

In case of foreign attachment.

On return of every attachment publication thereof shall be made.

If defendant appear.

When attachment shall be executed and not replevied, judgment.

Estate to be sold.

Garnishee when served with attachment.

Judgment against.

Failing to appear.

Scire facias shall issue.

the court shall confirm such judgment, and award execution for the plaintiff's whole judgment and costs, and if upon the examination of any garnishee, it shall appear to the court, that there is any of the defendant's estate in the hands of any person or persons who have not been summoned, such court shall, upon motion of the plaintiff, grant a judicial attachment, to be levied upon the property in the hands of such person or persons having any of the estate of the defendant in his or their possession or custody, who shall appear and answer, and be liable as other garnishees. Where any garnishee shall deliver to the sheriff all the goods, chattels, and effects whatsoever, found or confessed to be in his or her possession belonging to the defendant or any part thereof, the same shall be received in discharge of so much of the judgment as the same shall be appraised to by the jury aforesaid, who shall enquire and return the value thereof, according to the evidence which may be submitted to them relative thereto.

Judicial attachment.

When garnishee delivers up goods, &c.

Where the debt of a garnishee is not due, execution shall be stayed.

Negotiable instrument.

Plaintiff may compel the answer of garnishee.

Interrogations.

Answer of garnishee.

Where plff. shall allege that garnishee has not made a true discovery.

If it shall appear that the debt of any such garnishee to such defendant is not yet due, which fact shall also appear by the finding of the jury, and the time when it becomes due, then execution shall be stayed against such garnishee until the same shall become due; nothing in this act shall be construed to authorize a judgment to be rendered against a garnishee, for a debt which may be due on a negotiable instrument, unless such debt shall be due at the time of rendering the judgment.

SEC. 15. If any such writ of attachment shall be served as aforesaid, it shall and may be lawful for any such plaintiff at any time during the return term of the said court, to prepare, exhibit and file, all and singular such allegations and interrogatories in writing, upon which he or she shall be desirous to obtain, and compel the answer of any and every garnishee, touching the lands, tenements, goods, chattels, moneys, credits and effects of the said defendants and the value thereof, in his, her or their possession, custody, or charge, or from him, her or them, due and owing to the said defendant at the time of the service of the said writ, or at any time after, or which shall or may thereafter become due; and it shall be the duty of each and every such garnishee, to exhibit and file under his oath or affirmation, on or before the third day of the next succeeding term, full, direct and true answers to all and singular the allegations and interrogatories by the said plaintiff supported, exhibited, and filed, in the manner herein before directed and described.

SEC. 16. Whenever the plaintiff, in any attachment shall allege, that any garnishee, summoned in such attachment, hath not discovered the true amount of debts due from him to the defendant, or what goods and chattels, belonging to the defendant, are in his or her possession, the court shall direct, without the formality of pleading, a jury to be empannelled immediately; (unless good cause be shown by either party for a continuance,) to enquire what is the true amount due from such garnishee to the defendant, and what goods and chattels are in his possession, belonging to the defendant. If the finding of the jury shall be against such garnishee, the court shall grant judgment in the same manner as if the facts found by the jury had been confessed by him or her, on his or her exa-

mination, and costs of inquest; and if the jury find in favor of the garnishee he shall recover his costs against the plaintiff.

SEC. 17. Where any witness resides out of the state or out of the county in which any attachment may be pending, and in which the testimony of such witness may be required, it shall be lawful for either party or garnishee in such attachment, on filing interrogatories with the clerk of the court from which such attachment has issued, and giving ten days notice of the time and place of taking such testimony, by serving a copy of such notice on the opposite party, or if such party shall be absent from, or reside out of the county, then by affixing a notice in writing thereof on the door of the court house of such county, at least ten days before the day set for the taking thereof, to obtain a commission from the clerk of the court to take the testimony of such witness or witnesses on such interrogatories; such examination may be read on the trial on motion of either of the parties or garnishee.

Witness residing out of county or state.

Depositions.

SEC. 18. In all cases of attachment, any person other than the defendant, claiming the property attached, may interplead without giving bail, but the property attached, shall not thereby be replevied; and the court shall immediately (unless good cause be shewn by either party for a continuance) direct a jury to be empannelled to enquire into the right of property; in all cases where the jury find for a claimant, such claimant shall be entitled to his costs; and where the jury find for the plaintiff in the attachment, such plaintiff shall recover his costs against such claimant.

Persons not defendants in the attachment, may interplead without giving bail.

SEC. 19. If judgment by default shall be entered on any attachment against the estate of the defendant, in any court of this state, no execution shall issue thereon, except against the goods and chattels, lands, and tenements on which the attachment may have been served, or against a garnishee or garnishees, who shall have money or other property in his or their hands belonging to the defendant; if the defendant shall appear, put in bail, and plead to the suit, the judgment rendered therein shall have the same force and effect as if a *capias ad respondendum* had been served on the person of the defendant.

Judgment by default.

Execution.

SEC. 20. When any goods and chattels shall be levied on by virtue of any attachment, and the sheriff or other proper officer, in whose custody such goods and chattels are, shall be of opinion that the same are of a perishable nature, and in danger of immediate waste and decay, such sheriff or other officer as aforesaid, shall summon three respectable freeholders of his county, who shall examine the goods and chattels so levied on; and if the said freeholders shall on oath or affirmation certify that, in their opinion, they are of a perishable nature, and in danger of immediate waste and decay, and if the person or persons to whom such goods and chattels belong, his, her or their agent or attorney, shall not within twenty days after serving such attachment replevy the same, then such goods and chattels shall be sold at public vendue by the sheriff or other proper officer, he having first advertised such sale at the court house and two other public places in his county, at least ten days before the sale; the money arising from such sale, shall be liable to the judgment obtained upon such attachment, and deposited in the hands of the clerk of the court to which the process shall be returnable, there to abide the event of such suit.

When property levied on under this act shall be of a perishable nature, Duty of officer.

Sale.

Notice. Money.

Slaves when attached.

Sustenance.

Compensation.

SEC. 21. When any sheriff or other officer shall serve an attachment on slaves, or indentured or registered colored servants, or horses, cattle, or live stock, and the same shall not be immediately replevied or restored to the debtor, it shall and may be lawful for such officer, and he is hereby required to provide sufficient sustenance for the support of such slaves indentured, or registered colored servants, and live stock, until the same shall be sold, or otherwise legally disposed of, or discharged from such attachment. They shall receive therefor a reasonable compensation, to be ascertained and determined by the court out of which the attachment issued, and the same shall be charged in the fee bill of such officer, and shall be collectable as part of the costs in the attachment.

Suit shall not abate by the death of either party.

SEC. 22. No suit or writ of attachment shall abate by the death of either party, where the cause of action would survive to the executor or administrator; but such death being suggested upon the record, the cause shall proceed under the regulation following: "Whenever a plaintiff in an attachment shall die, the executor or administrator of such plaintiff shall, within three months after the probate of the will, and obtaining letters testamentary, or after obtaining letters of administration, cause to be issued by the clerk of the court in which such attachment is pending, a *scire facias*, returnable to the next term of the said court, giving notice of his intention to become a party in the place and stead of the deceased testator or intestate, which shall be published at least four weeks successively in some newspaper published within this state, previous to the commencement of the term of such court, to which such *scire facias* is returnable, proof of which being exhibited to the court, such executor or administrator may, on motion, be made plaintiff therein, and the cause thereupon proceed: And where the defendant shall die, a *scire facias* shall issue in manner aforesaid, immediately after the expiration of two months; which *scire facias* shall contain a notice to the legal representatives of the defendant, whether executor, administrator, or heirs, of the pendency of such attachment, and of the intention of the plaintiff to proceed with the same; which being published in like manner for four weeks successively before the sitting of such court, in the case of an absconding or concealed debtor, or one who was standing in defiance of an officer, at the time of suing out such attachment, or one who intended to depart or had departed from the state, with the intention of removing his effects and personal estate beyond the limits of this state; and in the case of a non-resident debtor, in some newspaper printed in this state, four times before the first day of the term of such court, and proof of such publication being exhibited to said court to the satisfaction thereof, it shall be lawful for the plaintiff to proceed with his attachment, as if such death had not taken place. The executor, administrator, or other legal representative of the defendant, may appear at the return of the *scire facias*, and upon giving bond and security upon the same terms, and for the performance of the same conditions, that the defendant would have been required to give by this act, if living, shall be permitted to plead, and defend the said attachment in the same manner as his testator, intestate or ancestor might have done.

Scire facias.

Publication.

Scire facias.

Publication.

Foreign attachment.

Executor, &c.

SEC. 23. Any defendant against whom an attachment may be sued *set-off*, under the provisions of this act, or garnishee may avail himself in his defence of any set-off properly pleadable by the laws of this state, notwithstanding such set-off may be not due at the time of suing out such attachment, or at the trial thereof, any claim due or not due, may be set off by the garnishee, whether it exist against the plaintiff or defendant in the attachment. *Vs. plaintiff or defendant.*

SEC. 24. In all cases where more than one attachment shall be issued against the same person or persons, and returned to the same term of the court to which they are returnable, or where a judgment in a civil action shall also be rendered at the same term against the defendant, who is the same person and defendant in the attachment or attachments, the court shall direct the clerk to make an estimate of the several amounts each attaching or judgment creditor will be entitled to, out of the property of the defendant attached, either in the hands of any garnishee, or otherwise, after the sale and receipt of the proceeds thereof by the sheriff, calculating such amount in proportion to the amount of their several judgments, with costs, as the same will respectively bear to the amount of the sum received, so that each attaching and judgment creditor will receive his just part thereof in the proportion to his respective demand, the clerk shall thereupon certify the several amounts thereof to the sheriff, who shall pay over to the respective parties the several sums so certified, and endorse such payments on their respective executions. *Where more than one attachment shall be issued and returned to the same term of court.*

SEC. 25. On proof being made before any judge or justice of the peace, or clerk of the circuit court within this state, that a debtor is actually absconding, or concealed, or stands in defiance of an officer duly authorized to arrest him on civil process, as aforesaid, or has departed this state with the intention of having his effects and personal estate removed out of the state, or intends to depart with such intention, it shall be lawful for the clerk to issue, and sheriff or other officer to serve an attachment against such debtor on a Sunday as on any other day, as is directed in this act. *Attachment may be issued and served on Sunday.*

SEC. 26. The plaintiff or defendant in any attachment, the garnishee and the sheriff, or either of them, who may feel aggrieved by the judgment of the court, may prosecute writs of error, and take appeals as by law is provided in other cases in the circuit courts, and be entitled to recover their costs as in other cases. *Writs of error and appeals.*

SEC. 27. This act shall be construed in all courts of justice in the most liberal manner for the detection of fraud. *Act to be construed liberally.*

SEC. 28. No writ of attachment hereafter to be issued shall be quashed, nor the property taken thereon restored, nor any garnishee discharged, nor any bond by him given cancelled, nor any rule entered against the sheriff discharged on account of any insufficiency of the original affidavit, writ of attachment, or attachment bond, if the plaintiff, or some credible person for him, shall cause a legal and sufficient affidavit or attachment bond to be filed, or the writ to be amended in such time and manner as the courts or justices shall respectively in their discretion direct; and in that event the cause shall proceed as if such proceedings had originally been sufficient: *Attachment shall not be quashed for insufficiency of the original affidavit, &c.* *Plea in abatement.*

abatement traversing the facts in the affidavit shall be filed, and a trial shall be thereon had, if the issue shall be found for the defendant, the attachment shall be quashed.

Defendant may plead without giving bail or entering into bond; but cannot replevy without bond.

SEC. 29. Any defendant in an attachment may appear and plead without giving bail, or entering into any bond. But in case any defendant shall desire to replevy an attachment, he shall execute to the sheriff a bond, with security to be approved of by the sheriff, in double the amount of the value of the property and credits attached, conditioned that such property and credits attached shall be produced and delivered, subject to the judgment of the court, when and where the court shall direct; or, at his option, shall give like bond and security, in a sum sufficient to cover the debt and damages sworn to in behalf of the plaintiff, with all interest, damages and costs of suit, conditioned that the defendant will pay the plaintiff the amount of the judgment and costs which may be rendered against him, in that suit, on a final trial, within ninety days after such judgment shall be rendered; in term time, a recognizance, in substance as aforesaid, may be taken in open court, and entered of record, in which case the court shall approve of the security and the recognizance made to the plaintiff. Then in every such case the attachment shall be dissolved, and the property taken restored, and all previous proceedings either against the sheriff or against the garnishees, set aside, and the cause shall proceed as if the defendant had been seasonably served with a writ of summonses.

Recognizance.

Plffs. in actions of debt, &c. may sue out attachments.

Title of suit.

When attachment has issued from the circuit court of any co. attachment may be issued to any other county.

Acts repealed.

SEC. 30. Plaintiffs in any action of debt, covenant or trespass, or on the case upon promises, having commenced their action or actions, by summons, may, at any term pending such suit, and before judgment therein, on filing, in the office of the clerk where such action is pending, a sufficient affidavit and bond, sue out an attachment against the lands and tenements, goods and chattels, right, credits, moneys and effects of the defendant, which attachment shall be entitled in the suit pending and be in aid thereof, and such proceedings shall be thereupon had, as are required or permitted in original attachments, in all things as near as may be. The thirtieth section of this act shall apply to attachments issued by justices of the peace as well as to those issued by the circuit court.

SEC. 32. Where any attachment has issued out of the circuit court in any county, it shall be lawful for the plaintiff, at any time before judgment, to cause an attachment to be issued to any other county of this state, where the defendant may have lands, goods, chattels, rights, credits, or effects, which writ of attachment, the sheriff to whom it shall be directed shall levy on the lands, goods, chattels, rights, credits and effects, of the defendant in such county, and make return thereof as in other cases.

SEC. 33. All acts and parts of acts heretofore passed on the subject of attachments are hereby repealed. But proceedings commenced under the said acts before this act takes effect, shall be in no wise affected. This act to be in force from and after the first of June next.

APPROVED, February 12th, 1833.

AN ACT authorizing the seizure of boats and other vessels by In force June 1st, 1833.
Attachment in certain cases.

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly:* That boats and vessels of all descriptions, built, repaired, or equipped, or running upon any of the navigable waters within the jurisdiction of this state, shall be liable for all debts contracted by the owner or owners, masters, supercargoes, or consignees thereof, on account of all work done, supplies or materials furnished by mechanics, tradesmen, and others for, or on account of, or towards the building, repairing, fitting, furnishing, or equipping such boats or vessels, their engines, machinery, sails, rigging, tackle, apparel and furniture; and such debts shall have the preference of all other debts due from the owners, or proprietors, except the wages of mariners, boatsmen, and others employed in the service of such boats and vessels, which shall first be paid.

Boats and vessels liable for the debts of owners.

Preference.

SEC. 2. Any person having a demand, contracted as before mentioned, against any such boat or vessel, may have an attachment to be issued out of any court, or by any justice of the peace having jurisdiction thereof, in any county in this state, in which such boat or vessel may be found, either against the owner or owners, by their proper names, or by the name and style of their co-partnership, if known, otherwise against such boat or vessel, by her name or description only, authorizing and directing the seizure and detention of the same, with her engine, machinery, sails, rigging, tackle, apparel and furniture, by the sheriff or constable, upon affidavit being made of the justice of such demand, and bond given by the plaintiff, as in other cases of attachment: *Provided*, that in all cases, where such proceedings are instituted against such boat or vessel by her name or description only, the bond to be given by the plaintiff, shall be made payable to the people of the state of Illinois, but for the use and benefit of the owner or owners of such boat or vessel, who may institute a suit thereon, if damages be occasioned by the issuing of such attachment, and have recovery thereon in the same manner as if said bond had been given to such person or persons by their proper names, or in the name and style of their co-partnership.

May be levied on by attachment.

Affidavit and bond.

SEC. 3. Upon the return of such attachment, the person or persons having demands of the description aforesaid, and for whose benefit such attachment was issued, shall file a written declaration or statement, against such boat or vessel, by her name or description, or against the owner or owners, if known as aforesaid, briefly reciting the nature of the demand, whether for work done, or materials, firewood, or supplies of provisions furnished, and whether at the request of the owner, master, supercargo, or consignee of such boat or vessel, and that such demand remains unpaid; annexing to such declaration or statement, a bill of the particulars constituting such demand in separate and distinct items; and the like proceedings shall be had in all other respects, and the like judgment and execution, as in other cases of attachment.

Upon return of the attachment the plaintiff shall file a statement of his demand.

SEC. 4. All engineers, pilots, mariners, boatsmen, and others employed in any capacity, in or about the service of any such boat

Engineers, pilots and

others, entitled to the benefit of this act. or vessel, who may be entitled to arrearages of wages, in consequence of such service, may proceed to collect such wages under the provisions of this act, and shall be entitled to all the benefits thereof.

If owner shall give bond with security before final judgment, the property attached shall be released,
SEC. 5. If the owner or owners, master, supercargo, or consignee of any such boat or vessel, seized by attachment as aforesaid, shall, at any time before final judgment, give bond to the plaintiff, with security to be approved by the clerk of the circuit court, or by the judge in term-time, (or justice of the peace as the case may be,) in double the amount of the demand sued for, and a sufficiency to discharge all costs which may accrue thereon, conditioned to pay and satisfy such judgment as the court (or justice of the peace) may render against such boat or vessel or defendant party, together with the costs of suit, then such boat or vessel shall be forthwith discharged from such attachment, seizure, and detention; but shall, nevertheless, be liable to be taken and sold on any execution to be issued on such judgment, or upon the judgment which may be rendered at any time on the bond required to be given by the defendant party as aforesaid. This act to take effect and be in force from and after the first day of June next.

APPROVED, February 13th, 1833.

In force May 1st, 1837.
AN ACT to regulate proceedings by attachment before Justices of the Peace.

Creditor makes complaint.
SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That hereafter, when any creditor, his agent or attorney shall make oath before any justice of the peace in this state, that any person is indebted to such creditor in a sum not exceeding fifty dollars, and such person so absconds or conceals himself, or stands in defiance of a peace officer, authorized to arrest him on civil process, so that such process cannot be served, it shall be lawful for the justice to grant an attachment against the personal estate of such person, directed to any constable of the county, returnable before himself, within thirty days from the date thereof, *Provided,* That upon issuing any attachment as aforesaid, the justice shall take from the creditor, his agent or attorney, a bond payable to the defendant with good security, in a penalty of double the amount for which the attachment is prayed to be issued; conditioned, that such creditor will pay the defendant all damages which he may sustain by reason of the wrongful suing out the attachment.

Justice to grant attachments.
Proviso.
Bond.
Constable to levy attachments.
Duty.
SEC. 2. The constable to whom any attachment may be delivered, shall without delay execute the same, by levying on the personal property of the defendant, of value sufficient to satisfy the debt, or damages claimed to be due and all costs attending the collection of the same; he shall also read the same to the defendant, if the defendant can be found in the county, and make return thereof stating how he has executed the same.

To prevent errors in issuing attachments, and taking bonds, the attachment and condition of the bond shall be in the following form, viz:

STATE OF ILLINOIS, }
 COUNTY } Sect.

Form of attachment.
 The people of the state of Illinois, to any constable of said county, Greeting, whereas A. B. (or agent or attorney of A. B. as the case may be) hath complained on oath (or affirmation) before C. D. a justice of the peace in and for said county, that E. F. is justly indebted to the said A. B. in the amount of _____ dollars, and oath (or affirmation) having been also made [that] the said E. F. so absconds or conceals himself, or stands in defiance of a peace officer, authorized to arrest him or her, with civil process, so that the ordinary process of law cannot be served on him (or her as the case may be) and the said A. B. having given bond and security according to the directions of the act in such cases made and provided; We therefore command you that you attach so much of the personal estate of the said E. F. to be found in your county as shall be of value sufficient to satisfy the said debt and costs, according to the complaint, and such personal estate so attached, in your hands to secure, or so to provide that the same may be liable to further proceedings thereon, according to law, before the undersigned, justice of the peace. And in case personal property of value sufficient cannot be found, that you summon all persons whom the plaintiff or his agent shall direct, to appear before said justice, on the _____ day of _____ next, then and there to answer what may be objected against him or them, when and where you shall make known how you have executed this writ; and have you then and there this writ. Given under my hand and seal, the _____ day of _____ 183 .

C. D. Justice of the peace. Seal.

The condition of the above obligation is such that, whereas the above bounden _____ hath on the day of the date hereof, prayed an attachment at the suit of _____ against the personal estate of the above named _____ for the sum of _____ and the same being about to be sued out, returnable on the _____ day of _____ before (said justice.) Now if the said _____ shall prosecute his suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said _____ all such costs in such suit, and such damages as the said _____ may sustain, by reason of wrongfully suing out the said attachment, then the above obligation to be void, else to remain in full force and virtue.

Witness our hands and seals this _____ day of _____ 183 .

Seal.
 Seal.

Form of condition of bond.
 No attachment shall be abated or dismissed for want of form, if the essential matters expressed in the foregoing precedents be substantially set forth; and justices of the peace shall allow any amendment to be made, of any affidavit, writ, return or bond which may be necessary to obviate objections to the same; and in cases of appeals to the circuit courts, the courts shall allow amendments as aforesaid.

If defendant appear, justice to proceed.

SEC. 3. Upon the return of any attachment issued by a justice of the peace, if it shall appear that the defendant has been personally served with the same; or if such defendant shall appear without such service, the justice shall proceed to hear and determine the cause, as in cases of proceeding by summons. But if it does not appear that the defendant has been served, and no appearance be entered by the defendant as aforesaid, the justice shall continue the case ten days, and shall immediately prepare a notice to be posted up at three public places in the neighborhood of the justice, directed to the defendant, and stating the fact, that an attachment had been issued, and at whose instance, the amount claimed to be due, and the time and place of trial; and also stating, that unless the said defendant shall appear at the time and place fixed for trial, that judgment will be entered by default, and the property attached, ordered to be sold to satisfy the same; which notice shall be delivered to the constable, who shall post three copies of the same, at three public places in the neighborhood of the justice, at least eight days before the day set for trial; and on or before that day he shall return the notice delivered to him by the justice, with an endorsement thereon, stating the time when and the place where he posted copies, as herein required.

Justice to continue cause ten days and notice to be posted up.

Return.

Justice to proceed to hear and determine the case.

SEC. 4. When notices shall be given of any proceedings by attachment, as required by the third section of this act, the justice shall, on the day set for trial of the cause, proceed to hear and determine the same, as though process had been personally served upon the defendant; and if judgment be given against the defendant, shall order a sale of the property attached, or so much thereof as will satisfy the judgment, and all costs of suit. But if the constable shall have failed to post the notices as herein required, the justice shall again continue the cause, and require notices to be posted as aforesaid previous to any trial of the cause.

Constable failing, notices to be posted up.

Constable to notify persons indebted to, or having property of defendant.

SEC. 5. When any constable shall be unable to find personal property of any defendant, sufficient to satisfy any attachments issued under the provisions of this act, he is hereby required to notify any and all persons within his county, whom the creditor shall designate, as having any property, effects, or choses in action, in his possession or power belonging to the defendant, or who are in any wise indebted to such defendant, to appear before such justice on the return day of the attachment, then and there to answer upon oath, what amount he or she is indebted to the defendant in the attachment, or what property, effects or choses in action he or she had in his or her possession or power, at the time of serving the attachment. The person or persons so summoned, shall be considered as garnishees, and the constable shall state in his return, the names of all persons so summoned, and the date of service on each.

Persons summoned considered garnishees.

Justice to enter on record and proceed with cause.

SEC. 6. When an attachment shall be returned executed upon any person as garnishee, the justice shall make an entry upon the record of his proceedings in the cause, stating the name of each person summoned, and continue the case as to such garnishee, and shall proceed with the cause as against the defendant in the attachment as though the attachment had been levied on personal property.

SEC. 7. When judgment is entered by a justice of the peace against a defendant in attachment, and any person or persons have been summoned as garnishee in the case, it shall be the duty of the justice to issue a summons against each person so summoned, requiring him or her to appear before the justice at a time and place to be fixed in the summons, not less than five nor more than fifteen days from the date thereof, and show cause, if any he or she has, why a judgment shall not be entered against him or her for the amount of the judgment and costs against the defendant in attachment, which summons shall be served and returned by some constable of the county, and on the return day thereof, if any person so summoned shall fail to appear, the justice shall enter judgment against the person so failing to appear, for the amount of the judgment obtained against the defendant in attachment, and execution shall be issued thereon, as in other cases.

Justice to issue summons, show cause &c.

Justice to enter judgment.

SEC. 8. If any garnishee shall appear at the time and place required by the constable as aforesaid, and shall upon oath deny all indebtedness to the defendant in the attachment, and deny having any property or effects or choses in action in his possession or power belonging to such defendant, the justice shall forthwith discharge him, unless the plaintiff in the attachment shall satisfy the justice by other testimony that the garnishee was indebted to the defendant in the attachment, or had property, effects, or choses in action in his possession or power, at the time he was garnisheed; in which case the justice shall give judgment in the premises according to the right and justice of the cause, and issue execution as in other cases.

Garnishees denying on oath to be discharged unless plaintiff proves &c.

SEC. 9. Judgments obtained under the provisions of this act, where the defendant has been personally served with process, or shall have appeared to the action, shall have the same force and effect as judgments obtained upon a summons; but the property attached shall be sold before any execution is issued upon such judgment, and if such property shall not sell for a sum sufficient to pay the judgment and costs, execution may be issued to collect the balance.

Judgment obtained to have the force &c.

SEC. 10. Judgments obtained under the provisions of this act, when the defendant has not been personally served with process, and no appearance being entered, shall only authorize a sale of the property levied upon, and proceedings against the garnishees to collect the amount thereof. Defendants in attachments issued under the provisions of this act, where property may be levied upon, or the person in whose possession the property may be found, may retain possession of such property, upon executing a bond to the plaintiff in the attachment with good security, in a penalty of double the amount claimed by the attachment, conditioned that the property shall be delivered to any constable of the county whenever demanded, to be sold in satisfaction of any judgment which may be obtained in the attachment suit, or in case the property is not delivered, that the obligors will pay and satisfy the said judgment and costs, and when a bond shall be executed, the constable shall return the same with the attachment, and upon a breach of any condition thereof, the plaintiff shall have a right to prosecute suit thereon, and to recover the amount due upon his judgment and costs.

Defendants may retain property upon executing bond to plaintiff.

Condition of bond.

Remedy.

SEC. 11. In all cases arising under this act, when two or more attachments shall be levied on the same property, or be proved on the same garnishee, and judgment shall be entered on the same day, the proceeds of the property attached, or the money obtained from garnishees, shall be divided among the several plaintiffs in attachments, according to the amount of their judgments respectively.

Money to be divided between plaintiffs.

SEC. 12. Persons who are summoned as garnishees under the provisions of this act, may avail themselves in their defence of any sets-off or claim against the defendants in attachment, whether the same be due or not, *Provided*, the same would be allowed, if due, in a suit prosecuted by such defendant.

Garnishees may plead sets-offs or claims.

Proviso.

SEC. 13. Any person claiming the right of any property, levied on by any attachment issued by a justice of the peace, may have a trial of the right of property, in the same manner as if such property had been levied on by virtue of an execution, issued by a justice of the peace, *Provided, always*, appeals from the judgment of justice of the peace, under the provisions of this act, may be allowed, taken and perfected, as in other cases of appeals from the judgments of justices of the peace.

Persons claiming right of property to have trial of right of property.

Proviso.

SEC. 14. Sections five and thirty-one of the act, entitled "An Act concerning attachments, approved 12th February 1833," are hereby repealed; but all rights acquired, and proceedings commenced, under the provisions of those sections, before this act takes effect, shall be and remain as though this act had not passed. This act shall take effect on the first day of May next.

Part of an act repealed.

APPROVED 27th February, 1837.

ATTORNEY GENERAL AND STATE'S ATTORNEYS.

AN ACT relating to the Attorney General and State's Attorneys.

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly*, That the attorney general shall continue to reside in, and perform the duties of said office, for the first judicial circuit of this state. It shall be his duty to attend at each circuit court to be held in each of the counties belonging to said judicial circuit, and to commence and prosecute all actions, suits, process, indictments, and prosecutions, civil and criminal, in which the people of this state,* the president and directors of the State Bank of Illinois, or any county within such judicial district may be concerned; to defend all actions brought within said judicial district, against the auditor of public accounts, state bank, or any of the counties aforesaid, to prosecute all forfeited recognizances, and all suits and actions for the recovery of debts, revenues, moneys, fines, penalties, and forfeitures, accruing to the people of this state, or any county within the judicial district afore-

In force 19th Feb. 1827.

Duties of attorney general.

See act of 2nd March, 1833, in relation to auditor, treasurer, &c. sec. 5.

* *The old State Bank.*

said. He shall give his opinion without fee or reward, to any county commissioners' court, and to any justice of the peace within his circuit, when required so to do, upon any question of law relating to any criminal or other matter in which the people, or any county is concerned; and he shall perform such other and further duties, as may be enjoined on him by law.

SEC. 2. It shall be the duty of the attorney general to attend each of the terms of the supreme court, and there commence, prosecute, or defend every cause the people of this state, the auditor of public accounts, the state bank, or any county of this state shall in any wise be a party to, or interested in the result. It shall be his further duty to prosecute all impeachments which may be tried before the supreme court or the senate of this state. He shall also, when required, give his opinion and advice in writing, without fee or reward, to the general assembly, or either branch thereof, upon any question of law; and to the governor, or the person exercising the office of governor, the secretary of state, auditor of public accounts, and state treasurer, upon any question of law relating to the duties of their respective offices, which may be submitted to him by them or either of them.

To attend supreme court.

Prosecute impeachments and advise the officers of government.

SEC. 3. There shall be appointed by the governor, at the present session of the general assembly, by and with the advice and consent of the senate, one state's attorney for each judicial circuit in this state, except the circuit in which the attorney general resides; and the person so appointed shall be commissioned by the governor, to continue in office for four years from and after his appointment; and when any additional judicial circuit shall hereafter be created, it shall be filled, and the person commissioned in like manner, to continue in office as aforesaid: Each state's attorney shall reside within the circuit for which he is appointed, and shall do and perform all the duties, within the judicial circuit in which he shall reside, which are, by the first section of this act, required of the attorney general, in the circuit in which the said attorney general shall reside: and each of said state's attorneys shall perform such other duties as may be enjoined on them by law.

State's attorneys to be appointed.

Amended. See act of Feb. 7. 1835.

Their duties.

SEC. 4. It shall be the duty of the attorney general and state's attorneys to attend, if in their power, the examination of all persons brought on habeas corpus before a judge of the supreme or circuit court, within their circuits respectively; and, if convenient, shall attend the examination, within their respective circuits, of persons accused of felonious crimes, on being notified of the same.

To attend examinations on writs of habeas corpus.

SEC. 5. When the attorney general, or any state's attorney, shall be interested in any cause or proceeding, civil or criminal, which it is, or shall be made his duty to prosecute or defend, the court in which such cause is pending, or to be brought, may appoint some competent person to prosecute or defend such cause, and in all cases where the attorney general or state's attorney shall be absent or sick, and unable to attend to the discharge of his duties, the court in which any of his duties are required to be performed, may appoint some competent person to discharge such duties, until the attorney general or state's attorney appear and resume the discharge of his duties; and the person so appointed shall possess the same power in relation to such causes and the

Court may appoint competent person to prosecute in certain cases.

business in such court, and shall be entitled to the same fees therefor, as would have been allowed to the attorney general or state's attorney for said services.

Att. gen. may call on state's attorneys to assist.
 SEC. 6. The attorney general shall have a right to call upon any of the state's attorneys to assist him in the prosecution, or in the defence of any suit in the supreme court, or the trial of any impeachment which it shall be the duty of the attorney general to attend to ; and any state's attorney being so required shall give his assistance accordingly.

Laws repealed.
 SEC. 7. The act entitled "An act for the appointment of circuit attorneys, and defining their duties and the duties of the attorney general," approved March 23, 1819, and the act entitled "An act supplemental to an act entitled 'An act for the appointment of circuit attorneys and defining their duties, and the duties of the attorney general,' approved March 23, 1819," approved Jan. 18, 1825, be, and the same are hereby repealed.

This act to take effect from and after its passage.

APPROVED, Feb. 17, 1827.

In force Feb. 5th, 1833.
 AN ACT to amend an act relative to the duties of the office of Attorney General of this state.

Attorney gen. shall reside at seat of government.
 Be it enacted by the people of the state of Illinois, represented in the General Assembly : That hereafter the attorney general of this state shall reside at the seat of government, and shall prosecute in the circuit in which the seat of government may be situate, and perform all other duties which are now or hereafter may be enjoined on him by law.

APPROVED, Feb. 5th, 1833.

ATTORNEY GENERAL AND STATE'S ATTORNEYS.

In force Feb. 7, 1835.
 AN ACT to amend an act, entitled "An act relating to the Attorney General and State's Attorneys."

State's attorneys, how elected.
 SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That there be elected by the General Assembly, on joint vote, at the present session, and every two years thereafter, one State's Attorney for each Judicial Circuit now or hereafter to be created in this State, except the Circuit in which the Seat of Government is situated ; and the person so elected, shall be commissioned by the Governor, to continue in office for two years from and after his election, and until his successor shall be qualified.

Vacancies how filled.
 SEC. 2. Should any vacancy occur in any of the Judicial Circuits in this State between the sessions of the Legislature, it shall be the duty of the Governor to fill the same by the appointment of

some qualified person to discharge the duties of said office, who, when so appointed, shall continue in office until his successor is duly elected and qualified as in this act provided, and the act to which this is an amendment.

SEC. 3. So much of the third section of the act to which this is an amendment, approved, February 17, 1827, as comes within the meaning and purview of this act, be, and the same is hereby repealed. *Part of act repealed.*

This bill having been returned by the Council of Revision with their objections to the same becoming a law, and the same having been reconsidered, and again passed both Houses by a majority of the whole number of members elected, the objections of the Council of Revision notwithstanding, the same has become a law of this state, Feb. 7, 1835.

ATTORNEYS AND COUNSELORS AT LAW.

AN ACT concerning Attorneys and Counselors at law.

In force March 1st, 1833.

SEC. 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, That no person shall be permitted to practice as an attorney or counselor at law, or to commence, conduct, or defend any action, suit or plaint, in which he is not a party concerned, in any court of record within this state, either by using or subscribing his own name, or the name of any other person, without having previously obtained a license for that purpose from some two of the justices of the supreme court, which license shall constitute the person receiving the same, an attorney and counselor at law, and shall authorize him to appear in all the courts of record within this state, and then to practice as an attorney and counselor at law, according to the laws and customs thereof, for and during his good behaviour in said practice, and to demand and receive all such fees as are or hereafter may be established for any services which he shall or may render as an attorney and counselor at law in this state. *No person to be permitted to practice without having first obtained a license for that purpose. License.*

SEC. 2. No person shall be entitled to receive a license as aforesaid, until he shall have obtained a certificate from the court of some county of his good moral character. *Certificate of good moral character.*

SEC. 3. It shall be the duty of the clerk of the supreme court to make and keep a roll or record, stating at the head or commencement thereof, that the persons whose names are therein written, have been regularly licensed and admitted to practice as attorneys and counselors at law within this state, and that they have duly taken the oath to support the constitution of the United States and of this state, and also the oath of office as prescribed by law, which shall be certified and endorsed on the said license. *Clerk of the supreme court to keep a roll of attorneys.*

SEC. 4. And no person whose name is not subscribed to or written on the said roll, with the day and year when the same was subscribed thereto, or written thereon, shall be suffered or admitted *No person shall practice until so enrolled.*

to practice as an attorney or counselor at law within this state, under the penalty hereinafter mentioned, any thing in this act to the contrary notwithstanding; and the justices of the supreme court, in open court, shall have power at their discretion, to strike the name of any attorney or counselor at law from the roll for misconduct in his office: *Provided, always,* That every attorney, before his name is stricken off the roll, shall receive a written notice from the clerk of the supreme court, stating distinctly the grounds of complaint, or the charges exhibited against him, and he shall after such notice be heard in his defence, and allowed reasonable time to collect and prepare testimony for his justification. And every attorney whose name shall be at any time stricken off the roll by order of the court, in manner aforesaid, shall be considered as though his name had never been written thereon until such time as the said justice in open court shall authorize him to sign or subscribe the same.

Judges of the supreme court may strike attorney from the roll for misconduct.

Attorney refusing to pay over money collected for his client.

Privilege.

Judges not permitted to practice as attorneys.

Officers not permitted to practice law.

Oath.

SEC. 5. Every attorney and counselor at law, receiving money for the use of his client, and refusing to pay the same when demanded, may be proceeded against in a summary way on motion; and all attorneys and counselors at law, judges, clerks, and sheriffs, and all other officers of the several courts within this state, shall be liable to be arrested, and held to bail, and shall be subject to the same legal process, and may in all respects be prosecuted and proceeded against in the same courts, and in the same manner as other persons are, any law, usage, or custom to the contrary notwithstanding. *Provided, nevertheless,* said judges, counselors, or attorneys, clerks, sheriffs, and other officers of said courts, shall be privileged from arrests while attending courts, and whilst going to and returning from court.

SEC. 6. No person shall be permitted to practice as an attorney or counselor at law, by instituting, conducting, or defending any action, suit or plaint in any court of this state, or of the United States, who holds a commission as a justice of the supreme or circuit courts; nor shall any person who holds a commission as a coroner, sheriff, or county commissioner, or who acts as deputy sheriff, jailer, or constable within this state, be permitted to practice as an attorney or counselor at law in the court in which he presides as such justice of the supreme or circuit court, or county commissioner; nor shall such coroner, sheriff, deputy sheriff, jailer, or constable be permitted to practice as aforesaid, in the county in which he is commissioned or appointed, nor shall any clerk of the supreme court, circuit court, or court of the county, be permitted to practice as an attorney or counselor at law in the court of which he is clerk, and no person shall be permitted or suffered to enter his name on the roll or record, to be kept as aforesaid, by the clerk of the supreme court, or do any official act appertaining to the office of an attorney or counselor at law, until he hath taken an oath to support the constitution of the United States and of this state, and the person administering such oath, shall certify the same on the license, which certificate shall be a sufficient voucher to the clerk of the supreme court, to enter or insert, or permit to be entered or inserted on the roll of attorneys and counselors at law, the name of the person of whom such certificate is made.

SEC. 7. The following oath of office shall be administered to every attorney and counselor at law, before they subscribe the respective rolls, to wit: I swear, or affirm, that I will, in all things, faithfully execute the duties of an attorney at law, or counselor at law, (as the case may be,) according to the best of my understanding and abilities.

SEC. 8. Any person producing a license or other satisfactory voucher, proving that he hath been regularly admitted an attorney at law, in any court of record within the United States, that he is of good moral character, may be licensed and admitted to practice as a counselor and attorney at law, in any court in this state, without examination.

SEC. 9. If any person or persons, not licensed as aforesaid, shall receive any money, or any species of property as a fee or compensation for services rendered, or to be rendered by him, as an attorney or attorneys, counselor or counselors at law within this state, all money so received by him shall be considered as money received to the use of the person paying the same, and may be recovered back, with costs of suit, by an action or actions for money had and received; and all property delivered or conveyed for the purpose aforesaid, or the value thereof, may be recovered back, with costs of suit, by the person conveying or delivering the same, by action of detinue or trover and conversion, and the person or persons receiving such money or property shall forfeit threefold the amount or value thereof, to be recovered, with costs of suit, before any magistrate, if within a magistrate's jurisdiction; but if not, in any court of record within the state, by action of debt, *qui tam*, the one half to the use of the person who shall sue for and recover the same and the other half to the use of the county in which such suit shall be brought; and if any person or persons shall sign or cause to be signed the name of an attorney, or either of the justices of the supreme court, to any certificate or license provided for by this act, with an intent to deceive, such person shall be deemed guilty of forgery, and shall be prosecuted and punished accordingly.

SEC. 10. Plaintiffs shall have the liberty of prosecuting, and defendants shall have the privilege of defending in their proper persons, and nothing herein contained shall be so construed as to affect any person or persons heretofore admitted to the degree of an attorney or counselor at law, by the laws of this state or of the Illinois territory, so as to subject them to further examination, or make it necessary for them to renew their license.

SEC. 11. Hereafter, when any counselor or attorney at law, residing in any of the adjacent states or territories, may desire to practice law in this state, such counselor or attorney shall be allowed to practice in the several courts of law in this state, upon the same terms, and in the same manner that counselors and attorneys at law residing in this state now are or hereafter may be admitted to practice law in such adjacent state or territory. The act of 1819, on the subject of attorneys at law, is hereby repealed.

This act to take effect, and be in force from and after its passage.

APPROVED, March 1st, 1833.

AUDITOR, TREASURER AND ATTORNEY
GENERAL.

*In force
July 2d,
1833.*

AN ACT to consolidate the acts relative to the Auditor and Treasurer and election of Attorney General.

*Auditor
shall be
elected eve-
ry two
years.*

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That the general assembly shall, during their session commencing on the first Monday in December, 1834, and every two years thereafter, elect by joint vote, an auditor of public accounts, who shall be commissioned by the governor, and shall take and subscribe an oath, before some justice of the supreme court, or justice of the peace, to support the constitution of the United States and of this state, and also that he will faithfully discharge the duties appertaining to said office of auditor of public accounts; which said oath shall be endorsed upon his commission, and a copy of which shall be filed in the office (of the) secretary of state.

*Shall give
bond.*

SEC. 2. The auditor so elected, shall, before he enters upon the duties of his said office, enter into bond, payable to the people of the state of Illinois, with one or more good securities, in the sum of ten thousand dollars, to be approved by the governor, and which bond shall be filed in the office of secretary of state, conditioned for the faithful discharge of the duties of said office, by said auditor, according to law, and for the delivery over to his successor of all books, records, vouchers, papers, presses, and furniture appertaining to said office, whole, safe, and undefaced: And should the condition of the said bond at any time be broken by said auditor, the governor shall cause suit to be instituted upon such bond, against said auditor and his securities, nor shall one recovery render the same void, but the same may be prosecuted from time to time, until the whole penalty shall be recovered.

Suit.

*Shall per-
sonally
sign all
warrants,
&c.*

SEC. 3. The auditor of public accounts shall hereafter, in all cases, personally sign all warrants, for money on the treasury of the state, all tax receipts, and all other papers necessary and proper for the auditor to sign.

*Warrants
shall be
counter-
signed.*

SEC. 4. In all cases where warrants for money are issued by the auditor upon the state treasurer, the said warrants, before they are delivered to the person or persons for whose benefit the same are drawn, shall be presented by the auditor to the state treasurer, who shall personally countersign the same, and shall also enter in a book, to be kept for that purpose by him, the date, amount, kind of money, and the name of the person or persons to whom the same are made payable.

*Attorney
general
elected eve-
ry two
years.*

SEC. 5. There shall be elected by the general assembly of the state of Illinois, at, and during the session thereof, commencing on the first Monday in December, 1834, and every two years thereafter, by joint vote of both branches of the general assembly, an attorney general, whose duties shall be such as are or may be defined by law.

SEC. 6. Whenever any person shall pay to the state treasurer any auditor's warrant, bank notes, or money, on account of any debt to the state bank, or any debt due the state, or for taxes, the

treasurer is required to give duplicate receipts for such payments, one of which receipts shall describe the kind of funds in which the payment shall be made, and shall be filed in the auditor's office, and entered in a book to be kept for that purpose, and the other copy shall be countersigned by the auditor, and delivered to the person making payment; and no payment shall be considered as having been made, until the treasurer's receipt shall be countersigned by the auditor.

*Treasurer
required to
give dupli-
cate re-
ceipts.*

SEC. 7. It shall be the duty of the auditor at all times to keep the accounts of the state, with any state or territory and with the United States, with all public officers, corporations, and individuals having accounts with this state; he shall audit all accounts of public officers who are to be paid out of the state treasury; of the members of the legislature, and all persons authorized to receive money out of the treasury, by virtue of any appropriation made, or to be made by law, particularly authorizing such account.

*Auditor
shall keep
accounts.*

SEC. 8. On ascertaining the amount due any person from the treasury, the auditor shall grant his warrant on the treasury for the sum due.

*Issue war-
rants.*

SEC. 9. The said auditor shall make a fair list of all accounts by him audited, in a book by him to be kept for that purpose, as also an account of all taxes or other moneys which may be due by any person to this state, or which may be paid into the treasury; he shall make out and present to each regular session of the general assembly, by the tenth day of the session, a report, shewing the amount of warrants by him drawn on the treasury, stating particularly on what account said warrants were drawn, and if drawn on the contingent fund, to whom, and for what they were issued. He shall also report the amount of money received into the treasury, stating particularly the source of revenue from which the same may be derived.

*Shall report
to general
assembly
amount of
warrants
drawn.*

SEC. 10. The said auditor shall keep a fair record of all warrants by him drawn, numbering the same in a book to be kept for that purpose.

*Shall keep
a record of
all war-
rants.*

SEC. 11. When the auditor shall have made out abstracts of all sums due in the respective counties, and sent them to the different collectors, he shall make out in a book to be kept for that purpose, a fair account against each collector, a certified copy of which, with the seal of his office thereto attached, shall be sufficient for the attorney general or state's attorneys, to proceed by motion or action against such delinquent collectors and their securities, before the supreme or circuit court.

*Abstract of
sums due
in different
counties.*

All quietuses necessary to be granted shall be issued by the auditor, under his hand and seal of office.

Quietuses.

SEC. 12. The state treasurer, when elected, shall be commissioned by the governor, and shall, prior to entering upon the duties of his office, execute bond, with sufficient security, to be approved of by a majority of the council of revision, in the sum of fifty thousand dollars, conditioned faithfully to perform all the duties of his office; the said bond shall be executed to the governor, payable to him or his successors in office, for the use of the state, and one recovery thereon shall not bar any other suit until

*State treas-
urer
shall give
bond.*

the whole penalty shall be recovered; the securities shall stand bound for the faithful performance on the part of the treasurer, of all duties which may be required by law, at the time of executing the bond, and also all duties which may be imposed upon the treasurer by any subsequent law.

Bond where insufficient.
 SEC. 13. The governor, whenever he shall suspect the obligors in such bond to be insufficient, shall require the state treasurer to give an additional bond, with security to be approved of by himself, in any amount not exceeding fifty thousand dollars, both of which bonds shall be filed in the office of secretary of state; and whenever the condition of either of the said bonds shall be broken in any wise, the governor shall order the same to be prosecuted.

Treasurer dying or resigning.
 SEC. 14. If said treasurer die, resign, or be displaced, or otherwise cease to hold his office, then such treasurer, his heirs, executors, or administrators, shall regularly state the amount, and deliver the moneys, warrants, together with all books, records, memorandums, papers, and instruments of writing of the state, in his, or their possession, or which such treasurer shall have received and not paid out according to law, to the succeeding treasurer, who shall make report thereon to the general assembly, and the said report, if confirmed by the legislature, shall be a discharge of the bonds, in which case they shall be given up to the said treasurer, his heirs, executors, or administrators.

Duties of Treasurer.
 SEC. 15. It shall be the duty of the state treasurer, to receive the proceeds of all taxes, and other public moneys of this state, and safely keep the same. He shall not pay out of the treasury any money, but on a warrant of the auditor, except the auditor's salary. He shall keep a regular and fair account of all moneys and revenues he receives and pays out, agreeably to law, stating therein particularly on what account each particular sum was paid out, or received, and the time when, and lay a copy thereof before the general assembly, by the tenth day of the session. An abstract of said reports of the auditor and treasurer, shall be prepared by the general assembly, and published with the laws of each session.

Abstract.
Shall report to the auditor monthly.
 SEC. 16. It shall be the duty of the treasurer to report monthly to the auditor, the amount of money which he may have received, stating on what account the same was paid into the treasury. He shall also report monthly an account of payments out of the treasury, and deposit with the auditor all warrants which he may have paid or received, and take the auditor's receipt for the same; and it shall be the duty of the auditor to make entries of said reports, in books to be kept by him for that purpose.

Suits. Offices to be kept at seat of government.
 SEC. 17. It shall be the duty of the auditor to institute all suits and motions in favor of the state.

SEC. 18. The auditor and treasurer shall keep their offices at the seat of government, and for the present shall occupy rooms in the banking house.

Warrants when lost or mislaid.
 SEC. 19. If any auditor's warrant shall be lost, mislaid, or destroyed, so that the same cannot be presented for payment, by the person entitled thereto, it shall be lawful for the auditor, at any time before such warrant shall be paid at the treasury, to issue a

duplicate warrant to the person or persons having so lost any warrant as aforesaid, on such person filing with the auditor, an affidavit in writing, sworn before some justice of the peace, or judge, stating the loss or destruction of any such warrant, and the auditor shall immediately certify the same to the treasurer, who shall thereby be authorized to pay any such duplicate warrant.

SEC. 21. The act entitled "An act defining the duties of the auditor and treasurer," approved March 24, 1819, the act to provide for the election of auditor of public accounts, and further defining his duties, approved, February 14, 1831, and the act further to define the duties of the auditor of public accounts, approved, February 16, 1831, be and the same are hereby repealed. But no rights, duties, or obligations accrued, or to accrue, under any of the said acts, shall be in any wise affected, or impaired, by the repeal thereof. This act to take effect and be in force from and after the first day of July next.

APPROVED, March 2d, 1833.

AN ACT in relation to Bank Collectors.

In force Feb 7, 1835.

SECTION 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, That the Auditor of public accounts and Treasurer, be, and they are hereby authorized and required to settle the accounts of the several attorneys, justices of the peace, and other collectors of money due to the President and Directors of the State* Bank of Illinois, and to allow such reasonable charges for contingent expenses as may appear to them proper, and if any balance shall be found due to any such attorney, justice of the peace, or other collector, said Auditor and Treasurer shall give a certificate of the same, and upon filing such certificate in the Auditor's office, the Auditor shall draw his warrant on the Treasurer, in favor of such attorney, justice of the peace, or other collector, for the amount contained in said certificate. If any sum shall appear to be due from any of said attorneys, justices of the peace, or other collectors, and they shall fail to appear and settle their accounts on or before the first day of April next, and pay over such amount as shall be found due from them, then it shall be the duty of said Treasurer to direct the Attorney General, or proper State's Attorney, to commence suit against all such delinquents without delay: *Provided*, That no money shall be paid out of the State Treasury, under the provisions of this act, until an appropriation shall be made by law.

Auditor and Treasurer authorized to settle with such collectors.

Collectors failing to pay over money, to be sued.

Proviso.

This act to be in force from and after its passage.

APPROVED, Feb. 7, 1835.

* The Old State Bank.

BAIL.

*AN ACT concerning Special Bail.**

*In force
June 1,
1827.*

*When bail
may be re-
quired.*

Affidavit.

*Duty of
clerk and
sheriff.*

*When the
action
sounds in
damages
only what
the affidavit
shall set
forth.*

*Sheriff's
duty when
bail is re-
quired.*

*Bonds to be
taken, &c.*

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That in all actions to be commenced in any court of record in this state, and founded upon any speciality, bill or note in writing, or on the judgment of any court, foreign or domestic, and in all actions of covenant and account, and actions on verbal contracts or assumpsits in law, in which the plaintiff or other credible person can ascertain the sum due, or damages sustained, and that the same will be in danger of being lost, or that the benefit of whatever judgment may be obtained will be in danger, unless the defendant or defendants be held to bail, and shall make affidavit thereof before the clerk of the court from which process issues, or a justice of the peace of this state; or if the plaintiff reside out of this state, before any judge of a court of record, or notary public or officer of the state or kingdom in which he resides, or may be duly authorized to administer an oath; and such affidavit shall be delivered to such clerk—he shall issue a *capias* and endorse thereon an order or direction to the sheriff or officer to whom such process shall be directed, to hold the defendant or defendants to bail, in the sum so specified in such affidavit; and it shall be the duty of the sheriff or officer serving such process to take bail accordingly. In actions sounding merely in damages, where the same cannot be ascertained as aforesaid, the affidavit shall also set forth the nature and cause of the action, with the substantial or chief facts in relation thereto; if upon examination thereof, the clerk shall be satisfied that sufficient cause is shown to require bail, he shall issue a *capias* in like manner and make an order thereon, specifying in what amount the defendant or defendants shall be required to give bail; the officer serving the process shall, in like manner, take bail. The bail taken as herein directed may be discharged, or the amount thereof reduced by the court to which the writ is returned, on application during the term to which it is returned, upon satisfactory proof.

SEC. 2. Where any writ shall have been issued from any court of record in this state, whereon bail is required, the sheriff or other officer to whom the same may be directed, shall take a bail bond to himself, with sufficient security in a penalty of double the sum for which bail is required. And for the purpose of avoiding errors in the taking thereof, the condition shall be substantially in the following form:

“The condition of this obligation is such, that whereas A B has lately sued out of the circuit court of the county of — a certain writ of *capias ad respondendum*, in certain plea of — against C D, returnable to the next term of the said court to be holden at — on the — day of — next: Now if the said C D shall be and appear at the said court, to be holden at — on the said — day of — next; and in case the said E F shall not be received

* See “Attorneys,” &c., Sec. 5.

as bail in the said action, shall put in good and sufficient bail, which shall be received by the plaintiff, or shall be adjudged sufficient by the court, or the said E F being accepted as bail, shall pay and satisfy the costs and condemnation money, which may be rendered against the said C D in the plea aforesaid, or surrender the body of the said C D in execution, in case the said C D shall not pay and satisfy the said costs and condemnation money, or surrender himself in execution, when by law such surrender is required, then this obligation to be void, otherwise to remain in full force and effect:” which bond so taken, shall be returned with the writ, on or before the first day of the term of the court to which the writ is returnable. In case the sheriff or other officer executing such process, and to whom it shall be directed, shall neglect to take such bond, or the bail be held insufficient, on exception taken and entered of record during the term to which such writ shall be made returnable, the sheriff or other officer having reasonable notice of taking such exception shall, in either case, be deemed and stand as special bail in the action; and the plaintiff may proceed to judgment against such sheriff or other officer, as in other cases against special bail.

SEC. 3. All bail taken according to the directions of this act, shall be deemed and taken as special bail, and may be proceeded against by an action of debt, in the name of the plaintiff in the original action, as in the case of a recognizance of bail, except where the bail shall be adjudged insufficient by the court; then the bond shall in that case stand as a security to the sheriff, who may, upon a forfeiture of the condition to appear and perfect bail, proceed thereon in an action of debt or covenant, to recover the amount of whatever damages he may have sustained by reason of the non-performance of such condition; and shall also have the same right to arrest and detain the principal in custody, in case the bail shall be adjudged insufficient by the court, and the principal shall not perfect bail within the time required by law, as the bail might have had; if he shall elect to arrest and commit the principal to prison, then his remedy on the bond shall cease, and the bond be void. The sufficiency of the bail shall be excepted to, during the term to which the writ is returnable, otherwise the same shall be considered as accepted by the plaintiff. Objections to the sufficiency of bail shall be decided by the court in which the exception is taken without delay, on such evidence as may be produced, and as it may deem satisfactory; the burthen of proof shall lie on the party affirming the sufficiency, allowing the bail to be examined on oath or affirmation, touching his sufficiency.

SEC. 4. It shall be lawful for the defendant in any action in any court of record when bail shall have been given as aforesaid, to surrender himself, or for his bail to surrender him at any time before the return day of the process, which may have been sued out against him as bail, to the court in which the suit may be pending, during the sitting thereof, or in vacation, to the sheriff of the county in which process was served. In case the surrender shall be made during the sitting of the court, an entry shall be made on the records of the court, stating the surrender and commitment of the defendant to the custody of the sheriff: if the surrender be made in vaca-

*When to be
returned.*

*Liability of
sheriff in
case of in-
sufficient
bail.*

*How bail
may be pro-
ceeded
against.*

*Exception
in favor of
sheriff.*

*Exceptions
to bail when
to be made.*

*Upon
whom the
burthen of
proof rests*

*Defendant
may sur-
render
himself or
his bail may
surrender
him in vaca-
tion.*

*What pro-
ceedings to
be had in
such cases.*

tion, the bail or principal shall obtain a certified copy of the bail bond from the sheriff or clerk of the court, in whosoever possession the same may be, and shall deliver himself, or be delivered by his bail to such sheriff, who shall thereupon endorse on such copy of the bail bond, an acknowledgment of the surrender of the body of the defendant to his custody, and thereupon the said copy of the bond with such acknowledgment shall be filed in the office of the clerk of the court in which the action is pending. Upon giving notice of the surrender, whether made in term time or vacation, to the plaintiff or his attorney, and paying the costs of the action against the bail, if any have accrued, the bail shall be discharged from all liability; the defendant shall be committed to the jail of the county, there to remain until discharged by due course of law.

If the surrender be after judgment the effects thereof.

If the surrender be after judgment, and the plaintiff shall not charge the defendant in execution within fifteen days after notice thereof, he shall be discharged out of custody; the plaintiff may, notwithstanding such discharge, have execution against the real and personal estate of the defendant.

Defendant surrendered into custody, may be discharged by giving other bail.

SEC. 5. Any defendant surrendered into custody or committed by his bail, in manner aforesaid, may at any time before final judgment shall have been rendered in the action, discharge himself from custody by giving other good and sufficient special bail; the sheriff or other officer authorized to take bail, shall take new bail to the same effect as is herein before provided.

Bail may arrest the body of the principal.

SEC. 6. In all cases of bail under this act, it shall and may be lawful for the bail to arrest and secure the body of the principal, until a surrender can be made to the sheriff of the county, where the suit may be pending, or to the court to which the process was returnable.

When suits may be brought on bail bond

SEC. 7. Hereafter, no suit shall be commenced upon any bail bond or recognizance of bail, in any civil action, until a writ of *capias ad satisfaciendum*, shall have issued against the defendant in the original action, directed to the sheriff of the county in which such defendant was arrested, and such sheriff shall have returned that the said defendant was not found in his county; if any action shall hereafter be commenced upon such bond or recognizance, and it shall not appear upon the trial thereof that a writ of *capias ad satisfaciendum* was issued and returned in the manner herein before mentioned, a verdict shall be found for the defendant. It shall be also necessary to charge the bail, that such writ of *capias ad satisfaciendum* should be issued and delivered, at least ten days before the return day thereof, to the sheriff of the county, or officer to whom it may be directed; such sheriff or other officer shall endeavor to serve such writ upon the defendant, any directions which he may receive from the plaintiff or his attorney, to the contrary notwithstanding.

When necessary to charge the bail.

Remedy of bail against principal.

SEC. 8. In all cases where judgment shall hereafter be entered up in any court of record in this state, against any person or persons as bail for another, and the amount of such judgment or any part thereof, has been paid, or discharged by such bail, his, her, or their executors, administrators or heirs, it shall and may be lawful for such bail, his, her, or their heirs, executors, or administrators, to obtain judgment by motion against the person or persons for

whom he, she, or they were bound, for the full amount of what shall have been paid by the said bail, his, her, or their heirs, executors or administrators, in such court where judgment shall have been entered up against such bail, before judgment shall be entered up against the principal, ten days previous notice of such motion shall have been given to him, if a resident of this state, and if a non-resident, then notice of such motion, shall have been published, for four weeks successively, in some newspaper printed in this state.

SEC. 9. In all actions against bail, it shall be lawful for the bail to plead in bar at such actions, the death of the principal before the return day of the process against the bail; if on the trial of any such issue, the death of the principal be found to have happened before such return day, judgment shall be given in favor of the defendant; he shall, notwithstanding, be liable to judgment and execution for the costs of suit, unless such death shall be found to have taken place before the commencement of the action.

Death of principal to be plead in bar.

SEC. 10. If any defendant having given special bail in any action, shall afterwards be legally arrested and delivered over to the executive authority of the United States, or of any state or territory thereof, upon a charge of having committed a crime out of the jurisdiction of this state, and shall be thereupon carried beyond the limits thereof, such bail shall be discharged from all liability incurred as bail, if the defendant has not returned to this state discharged from such arrest, before he shall be liable to be charged as bail for such defendant.

Arrest of defendant to discharge bail in certain cases.

SEC. 11. When any defendant in any civil action, shall have been discharged as an insolvent debtor, agreeably to the laws of this state respecting insolvent debtors, and a certificate from the authority lawfully granting the same, shall be produced to the court, the bail of such defendant shall, in all cases, be entitled to have an *exoneratus* entered upon the records of the court, which shall thereupon operate as a discharge from his bond or recognizance, in the same manner as if he had surrendered his principal in court, or to the sheriff as herein before directed: *Provided*, That judgment shall not have been recovered against him as the bail of such defendant.

A discharge under insolvent law to release bail.

SEC. 12. Hereafter, proceedings by *scire facias* against bail, in civil cases, shall not be allowed in any court of record in this state. Proceedings already instituted may be proceeded in as though this act had not been passed.

Proceedings by scire facias not allowed.

SEC. 13. All acts and parts of acts coming within the intent, spirit, and meaning of this act, and the objects and proceedings to which it relates, and heretofore in force in this state, are hereby repealed. No proceedings, however had, or rights secured under them, shall be in any way impeded or impaired, but may be prosecuted and enforced, as if this act had not taken effect. This act shall take effect on the first day of June next.

Repealing clause.

APPROVED, January 26, 1827.

BILLS OF EXCHANGE.

In force 1st
June, 1827.

AN ACT concerning Bills of Exchange.

Foreign
bills protes-
ted, how
paid.

Damages.

Inland bills
protested
how to be
paid.

Damages.

Act of 1821
repealed.

SEC. 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, That when any foreign bills of exchange, which may be drawn for any sum of money, expressed that the value has been received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or endorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest, from the time such bill ought to have been paid, until paid, and ten per cent. damages in addition, together with the cost and charges of protest.

SEC. 2. If any bill of exchange drawn upon any person, or body politic, or corporate, out of this state, but within the United States, or their territories, for the payment of money, and expressed to be value received, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or endorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill, with legal interest from the time such bill ought to have been paid, until paid, and five per cent. damages in addition, together with costs and charges of protest.

SEC. 3. The act entitled "An act regulating bills of exchange," approved February 14, 1821, shall be and the same is hereby repealed: *Provided*, that the repeal of said act shall in no way affect or impair any rights or interests acquired under said act. This act to take effect from and after the first day of June next.

APPROVED, Dec. 28th, 1826.

STATE BANK OF ILLINOIS.

In force
Feb. 12,
1835.

AN ACT to incorporate the subscribers to the Bank of the State of Illinois.

Bank es-
tablished.

Capital
stock,
\$1,500,000.

May be in-
creased
\$1,000,000.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That a Bank of the State of Illinois shall be established, the capital stock whereof shall be one million five hundred thousand dollars, to be divided into shares of one hundred dollars each; one million four hundred thousand dollars of said capital stock to be subscribed by individuals, [and] one hundred thousand shall be reserved, and may be subscribed for by the State of Illinois whenever the Legislature thereof may deem it proper to subscribe the whole or such parts thereof, as the condition of the Treasury may justify.

SEC. 2. The said capital stock may hereafter be increased by individual subscriptions, to an amount not exceeding one million of

dollars, to be subscribed for and taken under the direction of the president and directors of this corporation, in the same manner as herein provided for the subscription to the original capital stock.

SEC. 3. All persons who shall become holders of the capital stock of said Bank, pursuant to this act, shall be and they are hereby constituted a body corporate, by the name of the president, directors and company of the State Bank of Illinois; and such corporation shall continue until the first day of January, in the year one thousand eight hundred and sixty, and by that name, shall be competent to contract and be contracted with, sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in all courts and places, and in all matters whatsoever.

SEC. 4. The said corporation shall have power to carry on the business of banking, by discounting bills, notes, and other evidences of debt, by receiving deposits, and making all other contracts involving the interest or uses of money; by buying or selling gold and silver bullion, foreign coins and bills of exchange, by issuing bills, notes, or other evidences of debt, and by exercising such other incidental powers as shall be necessary to carry on all such business.

SEC. 5. The real estate which it shall be lawful for said Bank to purchase, hold and convey, shall be—1st. Such as shall be required for its immediate accommodation in the transaction of its business, or such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for moneys due; or—3d. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or—4th. Such as shall have been purchased at sales upon judgments, decrees or mortgages, obtained or made for such debts; and said Bank shall not purchase, hold or convey real estate in [any] other case, or for any other purpose; and all such real estate, not absolutely necessary for the convenient discharge of its business, shall be set up at least once a year at public sale, and if the sum offered therefor, shall be sufficient to reimburse the principal and interest of the debt for which it was taken by said corporation, it shall be absolutely sold.

SEC. 6. The said corporation shall not, directly or indirectly, deal or trade in buying or selling any goods, wares or merchandize, or commodities whatever.

SEC. 7. The said corporation may have and use a common seal—the same alter, break, change or renew at pleasure, and may also make, ordain and establish and put in execution such by-laws, ordinances, rules and regulations, as shall be necessary for the good government of the said Bank, and the prudent and efficient management of its affairs. No by-laws, ordinances, rules and regulations of the same, shall be in any wise contrary to the constitution and laws of this state, or of the United States.

SEC. 8. The principal Bank of said corporation, shall be located at Springfield, and an office of discount and deposite as a branch thereof, shall be established at Vandalia; and the president and directors aforesaid, may establish and discontinue such other

Subscribers
to the stock
incorporated.

Corporate
name.

Duration
of charter.

Nature of
the incor-
poration.

Real estate
to be held
by said
Bank.

Prohibited
from deal-
ing in mer-
chandize.

May have
a common
seal.

By-laws.

Principal
bank, where
located.

offices of discount and deposite as Branches within this State, whenever the interest of the community or Bank require it, in number not exceeding six, for the purpose of discount and deposite, and the transaction of such other business as may be legally confided to them under the provisions of this act; and to commit the management of all of the aforesaid branches under such regulations, as they shall from time to time deem prudent and necessary to adopt, to such number of persons as they shall choose.

Number of
branches.

Commis-
sioners to
receive sub-
scriptions to
capital
stock.

Notice.

Length of
time for
books to be
kept open.

SEC. 9. For procuring subscriptions for said capital stock, John Tillson, jr., Robert K. McLaughlin, Daniel Wann, A. G. S. Wight, John C. Riley, Wm. H. Davidson, Edward M. Wilson, Edward L. Pierson, Robert R. Green, Ezra Baker, jr., Aquilla Wren, John Taylor, Samuel C. Christie, Edmund Roberts, Benjamin Godfrey, Thomas Mather, A. M. Jenkins, Wm. Linn, W. S. Gilman, Charles Prentice, Richard I. Hamilton, A. H. Buckner, Wm. F. Thornton and Edmund D. Taylor, are appointed commissioners to receive all subscriptions therefor, and said commissioners, or a majority of them, shall first open in this State, one or more subscription books for said stock, on such days and at such places as they shall deem expedient; and shall, for such purpose, appoint a day, giving at least thirty days previous notice of such time and place in one or more of the newspapers printed at the seat of government of this State or elsewhere; and if the whole of the capital stock herein authorized to be subscribed for, shall not be taken within twenty days after the books shall be opened as aforesaid, the said commissioners or a majority of them, shall open other books on such days and at such places as they shall deem expedient, giving at least twenty days notice of the time and place of re-opening said books, in one or more of the newspapers printed at or near the place of re-opening said books.

SEC. 10. The books for subscription shall be kept open until all the original stock to be subscribed by individuals shall have been taken, and the sum of ten dollars on each share subscribed for, shall be paid to the said commissioners at the time of making such subscription; such payments shall be made in specie, bills of the Bank of the United States, or certificates of deposite in any of the deposite Banks of the United States, in New York or Philadelphia. As soon as the directors shall have been chosen, and the commissioners hereby appointed shall have been notified of their election, they shall pay over the whole amount of subscription severally paid to, and received by them in the same description of moneys so by them received, into the hands of the president and directors of the said corporation, taking their receipts therefor, to be delivered over to the cashier of said corporation as soon as he shall have given bond according to law: *Provided*, That if, on closing the books, it shall be found that more than one million four hundred thousand dollars have been subscribed, the excess shall be taken first from such as reside out of this State, then from corporations; and should there still be an excess, the same shall be taken in proportion from the subscriptions over one thousand dollars, until all are reduced to that amount; then from

all equally, until the whole amount shall not exceed one million four hundred thousand dollars.

SEC. 11. The stock, property and prudential concerns of said corporation, shall be conducted by nine directors, being stockholders and citizens of this State, but no person shall be a director who shall not at the time of his appointment hold at least ten shares of the stock of the incorporation. *Concerns of said bank, how managed.*

SEC. 12. The election of directors under this act, shall be held at such time and place in the town of Springfield, as shall be directed by the said commissioners, who, or a majority of whom, are hereby appointed inspectors of the first election; and the persons then elected as directors, shall hold their offices until the second Tuesday of June, 1836, and until others are elected. *Election of directors, when and where to be held.*

SEC. 13. The directors for every subsequent year, shall be elected on the second Tuesday of June in every year, at such time of the day, and at such place within the town of Springfield, and under the direction of such persons as a majority of the directors, for the time being, shall, by a resolution to be entered on their minutes, appoint, and shall hold their offices for one year, or until others are elected in their stead. *Shall be elected annually thereafter.*

SEC. 14. After the first election, no stockholder who shall not have held his stock for which he votes, for three calendar months previous to the day of election, shall be entitled to vote, and the number of votes to which such stockholders shall be entitled in voting for directors, shall be in the proportion following—that is to say, for each and every share, not exceeding four shares, one vote; for every two shares above four and not exceeding thirty, one vote; for every four shares above thirty and not exceeding ninety, one vote; for every six shares above ninety and not exceeding one hundred and fifty, one vote; and for every ten shares above one hundred and fifty, one vote. But no person, co-partnership, or corporation, shall be entitled to a greater number than one hundred votes. In all elections for directors, votes may be given either in person or by proxy; but no person shall vote by proxy more than one hundred votes, and no individual stockholder who shall be a resident of the county where the election is to be held at the time of such election, shall vote by proxy unless in case of unavoidable absence, except females or minors: *Provided*, no president, cashier, or other officer of said Bank or branches thereof, shall be permitted to vote at any election for directors as the attorney, agent or proxy of any stockholder: *Provided, also*, that no president, cashier or director of the Bank shall, during the term of his office, be eligible to a seat in either branch of the general assembly of this State. *Number of votes that each stockholder shall be entitled to.*

SEC. 15. All elections shall be by ballot, and the nine persons who shall have greatest number of votes, shall be the directors; and if at any election two or more persons have an equal number of votes for directors, then the directors who shall have been duly elected, shall proceed by ballot, and by plurality of votes determine which of the said persons so having an equal number of votes, shall be director or directors, so as to complete the whole number; and if any director shall cease to be a stockholder to the amount of ten shares, his office shall be vacant; and whenever any *Election to be by ballot. In case two or more have an equal number of votes.*

vacancy shall happen among the directors, from such or any other cause, such vacancy shall be filled for the remainder of the year in which it shall happen, by the directors, for the time being, or a majority of them.

Election of president. SEC. 16. The directors elected, as soon as may be after their election, shall proceed to choose by ballot, one of their number to be their President, who shall preside in the board until the next annual election; and in case of his death or resignation, they may proceed to fill the vacancy created thereby for the residue of his term. They shall have power to appoint a Cashier and all subordinate officers of the said corporation, fix their compensation, define their powers, and prescribe their duties; who shall give such bonds and in such penal sums, with such conditions, and with such securities as the directors shall prescribe, and hold their several offices during the pleasure of a majority of said directors.

General meetings of stockholders, when held. SEC. 17. That a general meeting of the stockholders shall be held on the second Monday of June, 1836, and on the second Monday of June annually, thereafter, at the time and place of holding the election for directors; and the directors for the year immediately preceding, shall present an exact and particular statement of the state, condition, and affairs of said Bank; and the stockholders present, shall have power to examine into all matters connected with said Bank, its pecuniary concerns and general welfare, and to adopt such measures as shall appear to them needful and proper, touching the management of said corporation and its effects, as shall not be inconsistent with the provisions of this charter.

Authorized to borrow money.
May loan the same. SEC. 18. The said corporation shall have power to receive on deposit, or borrow at such rate of interest as may be agreed upon, any sum of money not exceeding one million of dollars, and the same to loan on bond and mortgage of unincumbered real estate within the State; but no loan on such real estate shall be made in any case for more than one half of the appraised value thereof, for a term of time not exceeding five years, and at no higher rate of interest than ten per centum per annum.

When to commence business. SEC. 19. The said corporation shall not commence business until two hundred and fifty thousand dollars of the capital stock shall have been paid to said corporation in specie; and as soon as such payment shall have been made, the said directors shall notify the Governor of this State that they are ready to commence business; and thereupon, the said Governor shall appoint some suitable person or persons, to examine and count the money paid in on account of said capital stock, and then being actually in the vaults or possession of said corporation, whose duty it shall be, at the expense of said corporation, to make such examination, and ascertain by the oath of the President and Cashier of the said corporation, that the said capital has been, *bona fide*, paid in by the stockholders of the said corporation, in payment of instalments under the regulations of this charter, and for no other purpose whatever, and that it has actually been received as part of said capital stock; and thereupon, such person or persons so appointed by the Governor, shall forthwith make due return of such

examination, and the facts connected therewith, to the Governor; and when the return shall be made to him, as aforesaid, that the said sum of two hundred and fifty thousand dollars of the capital stock of the said corporation has been paid in and actually exists in the vaults in possession of said corporation, he shall cause proclamation to be made of the same, which shall be published, at the expense of the said corporation, in at least four of the newspapers printed in this State; and on the first publication of such proclamation, it shall be lawful for the said corporation to commence business, and not before.

SEC. 20. The directors shall have power to require the stockholders, respectively, to make payment of all sums of money by them subscribed and remaining unpaid, at such times and in such proportion as such directors shall see fit, under the pain of the forfeiture of the share upon which such payments are required, and all previous payments thereon, to the said corporation.

SEC. 21. The directors shall give notice of every such call by notice, to be published at least once a week, for eight weeks successively, in two or more newspapers in this State, one of which shall be at the seat of government of this State; which notice, so to be published, shall be a sufficient call on such stockholders to authorize, in case of default to comply therewith, the forfeiture above provided.

SEC. 22. The obligations, contracts, bills, notes and other evidences of debt, made or issued by the said corporation, and being assignable and negotiable in like manner as if made or issued by a private person; and those payable to bearer by delivery; and every evidence of debt assigned by the said corporation by endorsement thereon, shall enable the assignee thereof to maintain an action thereupon in his own name; but every note, bill or evidence of debt, purporting to be a bank note to be issued by the said corporation, shall be deemed and taken to be payable at the banking house of the said corporation, unless otherwise specified on its face.

SEC. 23. It shall be lawful for the said corporation, and they are hereby authorized, to demand and receive, for all sums of money loaned by them, the following rates of interest, to wit: On loans for sixty days or under, at the rate of six per cent. per annum; on loans over six months and under twelve, eight per cent. per annum: *Provided*, That the interest may be taken in advance and in accordance with the usual practice of banking institutions.

SEC. 24. The said corporation shall not issue or have in circulation at any time an amount of notes or bills put in circulation as money, exceeding twice and a half of its capital stock paid in and possessed, exclusive of the sums due on deposits; nor shall its loans and discounts at any time exceed three times the amount of such stock, exclusive of the deposits as aforesaid; and in case of excess, the directors, under whose administration it shall have happened, shall be liable in their natural and private capacities. Any director or directors who may be absent when such excess is created or contracted, or who may have dissented from the act whereby the same was created or contracted, may respectively exonerate themselves from being so liable, by entering his

protest to the same on the book of the minutes of the proceedings of the said corporation.

Refusal to redeem evidence of debt. SEC. 25. If, at any time, the corporation hereby created, shall neglect or refuse, for ten days after demand, at the banking house, during the regular hours of business, to redeem, in specie, any evidence of debt issued by the said corporation, the said corporation shall discontinue and close all its operations of business, except the securing and collecting of debts due or to become due to the said corporation, and the charter hereby granted shall be forfeited.

Payment demanded and refused. Damages. SEC. 26. The said corporation shall be liable to pay to the holders of every evidence of debt made by it—the payment of which shall have been demanded and refused damages for the non-payment thereof in lieu of interest at and after the rate of ten per centum per annum, from the time of such refusal until the payment of such evidence of debt and the damages thereon.

Stock assignable. SEC. 27. The stock of the said corporation shall be assignable and transferable according to such rules as shall be adopted, in that behalf, by the by-laws and ordinances thereof.

When the amount of stock reserved to the State shall be subscribed. SEC. 28. Whenever the one hundred thousand dollars reserved in this charter to be subscribed for by the State of Illinois, shall have been, by virtue of law, subscribed for, and the amount thereof paid in by the said State, the Governor shall nominate, and, by and with the advice and consent of the Senate, appoint two directors on the part of the State, to represent her in the said corporation, whose rights, powers and duties, shall be, in all respects, the same as those of the directors chosen by the stockholders.

Directors shall make dividends of profits. SEC. 29. It shall be the duty of the directors of the said corporation, to make dividends half-yearly, or otherwise, of so much of the surplus profits arising from the business of the said corporation, as they, or a majority of them, shall deem advisable.

Expenses incurred by commissioners, how paid. SEC. 30. The expenses incurred by Commissioners in executing any duties required by this act, shall be paid out of the moneys received by them, from the subscribers, out of the capital stock.

SEC. 31. The Legislature of this State shall never pass any law retarding, obstructing, staying, protracting, or in any wise suspending the collection of any debt or debts due the said Bank.

To be deemed a public act. SEC. 32. This act shall be taken and received by all Courts, and by all Judges, Magistrates, and other public officers, as a public act, and shall be construed liberally for all beneficial purposes therein intended; and all printed copies of the same which shall be printed by or under the authority of the General Assembly, shall be admitted as good evidence thereof without any other proof whatever.

Conveyances to be signed by the president. SEC. 33. All conveyances of real estate shall be made and signed by the President of this corporation, and shall have affixed to said conveyance the seal thereof.

Shall not issue bills of less than five dollars. SEC. 34. It shall not be lawful for this corporation, under penalty of the forfeiture of its charter, to issue any bank bills of a less denomination than five dollars; and the power is hereby reserved to the Legislature, fifteen years after the passage of this act should

it be considered advisable, to further restrict the corporation from issuing any bank bills of a less denomination than ten dollars.

SEC. 35. The stock in said Bank shall be considered as personal property, and may be sold on execution, and transferred on the books of the Bank by the officer selling the same, but in all cases be subject to a lien in favor of the Bank, for all debts *bona fide* due, or then owing and to become due the same from the owner. *Stock to be deemed personal property.*

SEC. 36. The said Bank shall pay into the State Treasury *Tax or bonus.* annually, on the first day of January, one half per cent. on the amount of capital stock actually paid in by individuals, in lieu of all taxes and impositions whatsoever: *Provided,* That if said Bank shall abuse any of its corporate powers, by interfering in any of the elections of this State, other than that of its own officers, the said Bank and its Branches shall forfeit its charter, and cease to exist.

APPROVED, Feb. 12, 1835.

NOTE. This act is amended by acts of Jan. 16, 1836; March 2d, and March 4th, 1837; and July 21st, 1837.

AN ACT to incorporate the President, Directors and Company of the Bank of Illinois at Shawneetown.

SEC. 1. *Be it enacted by the Legislative Council and House of Representatives of the Illinois Territory, and it is hereby enacted by the authority of the same,* That a Bank shall be established at Shawneetown, the capital stock whereof shall not exceed three hundred thousand dollars, to be divided into shares of one hundred dollars each, one-third thereof to remain open to be subscribed by the legislature of this territory, or state, when a state government shall be formed, which territory or state, shall be entitled to such part of the dividend of the said corporation in proportion to the amount actually subscribed by such territory or state, which one-third shall be divided into shares of one hundred dollars each, in the same manner as the individual stock is divided, and that subscriptions for constituting the said stock shall, on the first Monday in January next, be opened at Shawneetown, and at such other places as may be thought proper, under the superintendence of such persons as shall hereafter be appointed, which subscriptions shall continue open until the whole capital stock shall have been subscribed for: *Provided, however,* That so soon as there shall be fifty thousand dollars subscribed for in the whole, and ten thousand thereof actually paid in, the said corporation may commence business and issue their notes accordingly.

SEC. 2. *Be it further enacted,* That it shall be lawful for any person, or partnership, or body politic, to subscribe for such or so many shares as he, she, or they may think fit, nor shall there be more than ten shares subscribed in one day by any person, co-partnership or body politic, for the first ten days after opening the said subscriptions. The payments of said subscriptions shall be

made by the subscribers respectively, at the time and manner following—that is to say, at the time of subscribing there shall be paid into the hands of the person appointed to receive the same, the sum of ten dollars in gold or silver on each share subscribed for, and the residue of the stock shall be paid at such times and in such instalments as the directors may order: *Provided*, That no instalment shall exceed twenty-five per cent. on the stock subscribed for, and that at least sixty days notice be given in one or more public newspapers in the territory: *And provided, also*, That if any subscriber shall fail to make the second payment at the time appointed by the directors for such payment to be made, shall forfeit the sum so by him, her or them first paid, to and for the use of the corporation.

SEC. 3. *Be it further enacted*, That all those who shall become subscribers to the said Bank, their successors and assigns, shall be and they are hereby enacted and made a corporation and body politic, by the name and style of “The President, Director and Company of the Bank of Illinois,” and shall so continue until the first day of January, one thousand eight hundred and thirty-seven, and by that name shall be and hereby made able and capable in law, to have, purchase, receive, possess, enjoy, and retain, to them and their successors, lands, rents, tenements, hereditaments, goods, chattels and effects of what kind, nature or quality soever, to an amount not exceeding in the whole, five hundred thousand dollars, including the capital stock aforesaid, and the same to grant, demise, alien, or dispose of, to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record or any other place whatever; and also, to make, have and use a seal, and the same to break, alter and renew at pleasure, and also to ordain, establish and put in execution, such by-laws, ordinances and regulations as they shall deem necessary and convenient for the government of the said corporation, not inconsistent with the laws of the territory or constitution, and generally to do, perform and execute all and singular acts, matters and things which to them it may appertain to do, subject however to the rules, regulations, limitations and provisions hereinafter prescribed and declared.

SEC. 4. *Be it further enacted*, That for the well ordering of the affairs of the said corporation, there shall be twelve directors, the first election for whom shall be by the stockholders, by plurality of votes actually given, on such day as the persons appointed to superintend the subscriptions for stock shall appoint, by giving at least thirty days notice in all the public newspapers of the territory and those who shall be duly chosen at any election, shall be capable of serving as directors by virtue of such choice, until the full end or expiration of the first Monday of January next ensuing the time of such election, and no longer; and on the said first Monday of January in each and every year thereafter, the election for directors shall be holden, and the said directors at their first meeting after each election, shall choose one of their number as president.

SEC. 5. *Be it further enacted*, That in case it should happen at any time that an election for directors should not be had upon any day, when, pursuant to this act, it ought to have been holden,

the corporation shall not for that cause be considered as dissolved, but it shall be lawful to hold an election for directors on any other day, agreeably to such by-laws and regulations as may be made for the government of said corporation, and in such case the directors, for the time being, shall continue to execute and discharge the several duties of directors until such election is duly had and made; any thing in the fourth section of this act to the contrary notwithstanding: *And it is further provided*, That in case of death, resignation or removal of director or directors, the vacancy shall be filled by election for the balance of the year.

SEC. 6. *Be it further enacted*, That a majority of the directors, for the time being, shall have power to appoint such officers, clerks and servants under them, as shall be necessary for executing the business of the said corporation, and to allow them such compensation for their services respectively as shall be reasonable, and shall be capable of exercising such other powers and authorities for the well governing and ordering of the affairs of the said corporation as shall be prescribed, fixed and determined by the laws, regulations and ordinances of the same: *Provided always*, That a majority of the whole number of directors shall be requisite in the choice of a president and cashier.

SEC. 7. *Be it further enacted*, That the following rules, restrictions, limitations and provisions, shall form and be the fundamental articles of the Constitution of the said corporation, to wit:—The number of votes to which the stockholders shall be entitled in voting for directors, shall be according to the number of shares he, she or they may respectively hold, in the proportions following—that is to say, for one share and not more than two shares, one vote; for every two shares above two, and not exceeding ten, one vote; for every four shares above ten and not exceeding thirty, one vote; for every six shares above thirty and not exceeding sixty, one vote; for every eight shares above sixty and not exceeding one hundred, one vote; and for every ten shares exceeding one hundred shares, one vote; and after the first election, no share or shares shall confer a right of voting, which shall not have been holden three calendar months previous to the day of election.

2. The governor of the state or territory, is hereby appointed agent for the legislature, to vote for president, directors and cashier of said bank, and is hereby entitled to exercise the right of voting for the same in proportion to the number of shares actually subscribed for by the legislature, in the same ratio that individuals, or other bodies politic or corporate are entitled to vote for; and the said agent hereby appointed, shall exercise the power hereby vested in him until the legislature shall make other regulations respecting the same, and no longer.

3. None but a *bona fide* stockholder being a resident citizen of the territory, shall be a director; nor shall a director be entitled to any other emolument than such as shall be allowed by the stockholders at a general meeting, but the directors may make such compensation to the president for his extraordinary attendance at the bank, as shall appear to them reasonable and just.

4. Not less than four directors shall constitute a board for the transaction of business, of whom the president shall always be one,

except in case of sickness, or necessary absence, in which case, his place may be supplied by any other director; whom he, by writing under his own hand, may depute for that purpose.

5. Any number of stockholders, not less than fifteen, who shall be proprietors of not less than fifty shares, shall have power to call a general meeting of the stockholders for purposes relative to the institution, by giving at least thirty days notice in one or more of the public newspapers of the territory, specifying in such notice the object or objects of such meeting, and may, moreover, appoint three of their members as a committee to examine into the state and condition of the bank, and the manner in which its affairs have been conducted: *Provided*, That no member of such committee shall be a director, president or other officer of any other bank.

6. Every cashier before he enters upon the duties of his office, shall be required to give bond with two or more sureties to the satisfaction of the directors, in a sum not less than ten thousand dollars, conditioned for his good behavior, and the faithful performance of his duties to the said corporation, and the other officers and servants shall also enter into bond and security in such sum as the president and directors may prescribe.

7. The lands, tenements, and hereditaments which it shall be lawful for the said corporation to hold, shall be only such as shall be requisite for its immediate accommodation in relation to the convenient transaction of its business, and such as shall have been, *bona fide*, mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased upon judgments which shall have been obtained for such debts.

8. The total amount of debts which the said corporation shall at any time owe, whether by bond, bill, note or other contract, shall not exceed twice the amount of their capital stock actually paid over and above the moneys then actually deposited in the Bank for safe keeping; and in case of excess, the directors, under whose administration it shall happen, shall be liable for the same in their natural and private capacities, and an action of debt may be brought against them, or any of them, their or any of their heirs, executors or administrators, in any court competent to try the same, or either of them, by any creditor or creditors of the said corporation; but this provision shall not be construed to exempt the said corporation, or the lands, tenements, goods or chattels of the same from being liable for, and chargeable with the said excess; such of the said directors who may have been absent when the said excess was contracted or created, or who may have dissented from the resolution or act, whereby it was contracted or created, may respectively exonerate themselves from being so liable, by forthwith giving notice of the fact, and of their absence or dissent, at a general meeting of the stockholders, which they shall have power to call for that purpose.

9. The said corporation shall not directly or indirectly deal or trade in any thing except bills of exchange, gold or silver, or in the sale of goods really and truly pledged for money lent and not legally redeemed in due time, or of goods which shall be the produce of its lands; neither shall the said corporation take more

than at the rate of six per cent. per annum for or upon its loans or discounts.

10. The shares of the capital stock of the said corporation shall be assignable and transferable at any time, according to such rules as shall be established in that behalf, by the laws and ordinances of the same; but no stock shall be transferred, the holder thereof being indebted to the Bank, until such debt be satisfied, except the President and Directors shall otherwise order it.

11. The bills, obligatory and of credit, under the seal of the said corporation, which shall be made payable to any person or persons, shall be assignable by an endorsement thereupon, and shall possess the like qualities as to negotiability, and the holders thereof shall have and maintain the like actions thereon as if such bills obligatory and of credit, had been made by or on behalf a natural person; and all bills or notes which may be issued by order of the said corporation, signed by the President and countersigned by the principal Cashier, or Treasurer thereof, promising the payment of money to any person or persons, his, her or their order, or to bearer, though not under the seal of the said corporation, shall be binding and obligatory upon the same, in like manner and with like force and effect, as upon any private person or persons, if issued by him, her or them, in his, her or their private or natural capacity or capacities, and shall be assignable and negotiable in the like manner as if they were so issued by such private person or persons—that is to say, which shall be payable to any person or persons, his, her or their order—shall be assignable by endorsement, in like manner and with like effect as bills of exchange now are; and those which are payable to bearer, shall be assignable and negotiable by delivery only.

12. Half-yearly dividends shall be made of so much of the profits of the Bank as shall be deemed expedient and proper; and once in every three years, the directors shall lay before the stockholders, at a general meeting, an exact and particular statement of the debts which shall have remained unpaid, after the expiration of the original credit, for a period of treble the time of that credit, and of the surplus of profit, (if any) after deducting losses and dividends. If there shall be a failure in the payment of any part of any sums subscribed to the capital stock of said Bank, the party failing shall lose the dividend which may have accrued prior to the time of making such payment during the delay of the same.

SEC. 8. *And be it further enacted*, That the said corporation shall not at any time suspend or refuse payment in gold and silver, of any of its notes, bills or obligations, nor of any moneys received upon deposit in said Bank, or in its office of discount and deposit; and if the said corporation shall at any time refuse or neglect to pay on demand, any bill, note or obligation, issued by the corporation according to contract, promise or undertaking therein expressed, or shall neglect or refuse to pay on demand, any moneys received in said Bank, or in its office aforesaid on deposit, the person or persons entitled to receive the same, then, and in every such case, the holder of any such note, bill or obligation, or the person or persons entitled to demand and receive the same, shall recover interest on the said bills, notes, obligations or moneys, until the same

shall be fully paid and satisfied, at the rate of twelve per centum per annum, from the time of such demand as aforesaid: *Provided*, That the Legislature of this Territory may, at any time hereafter, enact laws to enforce and regulate the recovery of the amount of the notes, bills, obligations, or other debts, of which payment shall have been refused as aforesaid, with the rate of interest above mentioned; vesting jurisdiction for that purpose in any courts either of law or equity within this Territory.

SEC. 9. *Be it further enacted*, That John Marshall, David Apperson, Samuel Hays, Leonard White, and Samuel R. Campbell, or any three of them, shall be commissioners for the purpose of receiving subscriptions, and who shall have power to appoint a person to receive the money required to be paid at the time of subscribing; and the said receiver shall, as soon as the directors are appointed, pay over the same into the hands of such person as the directors may direct.

SEC. 10. *Be it further enacted*, That the aforesaid corporation shall not be dissolved previous to the expiration of their charter, nor until all their debts, contracts, notes, bills of exchange and undertakings in their corporate capacity, shall be finally and faithfully settled: *Provided, also*, That after the expiration of their charter, they shall not transact business according to the true intent and meaning of this act, further than to settle and close their contracts as above provided. This act to take effect from and after its passage.

WILLIS HARGRAVE,

Speaker of the House of Representatives, pro tem.

PIERRE MENARD,

President of the Legislative Council.

APPROVED, December 28, 1816.

NINIAN EDWARDS.

*In force
Feb. 12,
1835.*

AN ACT to extend for a limited time the Charter of the Bank of Illinois at Shawneetown.

Charter extended.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the Act of the Legislature of the late Territory of Illinois, entitled "An act to incorporate the President, Directors and Company of the Bank of Illinois," approved December 28th, 1816, be and the same is hereby continued in force for the term of twenty years from the first day of January, 1837; and the said corporation is hereby authorized to demand and receive, for loans made, the following rates of interest, to wit: On loans for six months or under, at the rate of six per cent. per annum; and on loans over six months, at the rate of eight per cent. per annum.

*Stock to be
forfeited
when pay-
ments are*

SEC. 2. Stock in said Bank, on which payments shall not be made in pursuance of regular calls made by the board of directors, shall become forfeited to the said Bank, and shall be open again to

be subscribed for, and taken by any other person or persons, in such public mode as the board of directors shall prescribe, of which reasonable public notice shall be given: *Provided*, That said Bank shall refund to the original proprietors thereof whatever amount (but without interest or dividends) shall have been actually paid in by them on such stock.

*not made
in pursu-
ance of re-
gular calls.*

SEC. 3. It shall be the duty of the Governor of this State, within three months from the passage of this act, to cause public notice to be given, in such newspapers in this State, and elsewhere, as he shall judge proper, that on the first day of May next, the one hundred thousand dollars of the stock of said Bank, reserved by the Charter thereof to be subscribed for by the State, will be sold at the Banking-house in Shawneetown, to the highest bidder; and on that day he shall cause to be sold, as aforesaid, for the highest premium which can be got, the said one hundred thousand dollars of stock, in lots of not less than ten shares, nor more than fifty shares at a time; and the said stock, when thus sold, shall be entered on the books of the Bank, in the names of the purchasers thereof, and shall be subject to the same rules and regulations as other stock in said Bank; and if said stock should not be sold on the said day, the same shall be and remain open for subscription on the books of said Bank until the same shall be all subscribed for and taken. The premium for which said stock shall be sold, shall be paid into the State Treasury for the use of the people of the State: *Provided*, That said Bank shall pay into the State Treasury, annually, one half per cent. on the capital stock actually paid into said Bank, to be used for State purposes; and said Bank shall be exempt from further taxation in consideration thereof.

*Duty of the
Governor
in relation
to the stock
reserved
and to be
subscribed
for by the
state.*

APPROVED, Feb. 12, 1835.

NOTE. This act is amended by act of February 28, 1837; and of July, 1837.

BANKS.

AN ACT supplemental to "an act to incorporate the subscribers to the bank of the state of Illinois."

*In force,
Jan. 16,
1836.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That it may be lawful for the State Bank of Illinois, to sell or vend at public auction, the capital stock provided for in the second section of the act to which this is a supplement, at any place within the limits of this State, having given four weeks notice prior to such sale, in at least four of the public papers printed within this state; and the profits arising from such sales, shall belong exclusively to the bank, upon the conditions as provided in the third and fourth sections of this act.

*Bank au-
thorized to
sell capital
stock.*

Notice.

Profits.

SEC. 2. There may be established in addition to the branches or offices of discount and deposite, now provided for in the 8th

*Additional
branches.*

section of the act to which this is a supplement, any number not exceeding three, at the option of said bank.

50 days additional time allowed for redemption of bills.
 SEC. 3. The corporation shall have fifty days in addition to the time now allowed in the 25th section of the act to which this is a supplement, for the redemption of its notes and evidences of debt, as provided for in the above recited section.

Bank to enter into contract with governor to redeem "Wiggins Loan."
 SEC. 4. The corporation or bank, shall not be entitled to the benefits or provisions of this act, until the said corporation, in consideration thereof, shall have entered into contract with the Governor of the State of Illinois, to redeem the loan, commonly called "the Wiggins Loan," made by authority of the State, on the 29th day of January, A. D. 1831, together with the interest which may hereafter accrue on said loan.

APPROVED, January 16, 1836.

In force Feb. 23, 1837.
 AN ACT supplemental to an act entitled an act to incorporate the president directors and company of the Bank of Illinois at Shawneetown.

Bank at Shawneetown, power to borrow any sum not exceeding \$250,000.
No higher interest than ten per cent.
 SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the Bank of Illinois at Shawneetown, shall have power to borrow at such rate of interest as may be agreed upon, any sum of money not exceeding two hundred and fifty thousand dollars, and the same to loan on bond and mortgage of unincumbered real estate within this state; but no loan on such real estate shall be made in any case for more than one half of the appraised value thereof, for a term not less than one year, nor exceeding five years, and at no higher rate of interest than ten per centum per annum.

APPROVED, February 23, 1837.

In force March 2, 1837.
 AN ACT authorizing a subscription to the capital stock of the State Bank of Illinois.

Governor required to subscribe for \$100,000 of state bank.
Order on treasurer to said bank.
 Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the governor of the state is hereby authorized and required for and in the name and behalf of the State of Illinois to subscribe for the one hundred thousand dollars of the capital stock of the State Bank of Illinois, reserved for the state by the act entitled an act to incorporate the subscribers to the Bank of the State of Illinois, approved on the twelfth day of February one thousand eight hundred and thirty-five, and he is hereby authorized and required to make orders upon the treasurer, payable to said bank for the

whole amount of said stock, which orders the treasurer is required to pay out of any money in the treasury not otherwise appropriated.

APPROVED, March 2d, 1837.

In force 4th March, 1837.
 AN ACT to increase the capital stock of certain banks and to provide means to pay the interest on a loan authorized by an act entitled "an act to establish and maintain a general system of internal improvement."

Capital of state bank increased two millions. Stock to be subscribed by the state. Capital of the Bank of Illinois increased 1,400,000.
 SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the capital stock of the State Bank of Illinois shall be and the same is hereby increased in the sum of two million dollars, exclusive of the one hundred thousand dollars reserved to the state, by the first section of an act entitled "an act to incorporate the subscribers to the Bank of the State of Illinois," the whole to be subscribed for by the state as hereafter directed. The capital stock of the Bank of Illinois at Shawneetown shall be and the same is hereby increased in the sum of one million four hundred thousand dollars, to be subscribed as hereafter directed; Provided the consent of said banks shall have been thereunto first given, by an entry on their books, under the direction of the board of directors, which shall be certified under the seal of the corporation to the board of fund commissioners, to be elected under the provisions of an act entitled "an act to establish and maintain a general system of internal improvement," and to the secretary of state, the same to be by him filed in his office.

Consent of the bank to be first given to the board of fund commissioners.
 SEC. 2. Said board of Fund Commissioners be, and they are hereby authorized and empowered to negotiate a loan on the credit and faith of this state, as, and for the exclusive and sole purpose hereinafter provided, for a sum or sums not exceeding three millions of dollars, as the same may be needed and wanted for the purposes hereinafter set forth, which shall be required to be paid at such times and such instalments as the same may be needed to carry into effect the object of this act.

Fund commissioners to negotiate a loan on the faith of the state. Not exceeding three millions of dollars.
 SEC. 3. Said board of Fund Commissioners shall constitute certificates of stock for the said loan or loans, to be called "the Illinois Bank and Internal Improvement stock," which shall be signed by the governor, and countersigned by the auditor and treasurer, with the great seal of state affixed thereto; bearing interest not exceeding six per centum per annum, payable semi-annually at either of the banks hereinafter named, or either of their branches, or at some bank in the city of New York, Philadelphia, Boston or Baltimore, or either, as may be agreed upon, and reimbursable at the pleasure of the state at any time after the year one thousand eight hundred and sixty, and the faith of the state is hereby irrevocably pledged for the payment and redemption of the stock hereby created, and the

interest accruing thereon. Said board of Fund Commissioners shall take and use all proper means and measures for the transferring of said stock.

SEC. 4. It shall be deemed a good and valid execution of the power to borrow herein conferred, for the said fund commissioners to cause the said certificates of stock, when created, to be sold; *Provided* that the said stock shall not, in any case, be sold for less than its par value.

To subscribe on behalf of the state 2,000,000 of stock of State Bank. To pay such per cent. on same as subscribers pay.

SEC. 5. It shall be the duty of the said board of Fund Commissioners, to subscribe on behalf of the state the two millions of dollars stock, as provided in the first section of this act, to the State Bank of Illinois and pay such per centum on every one hundred dollars so subscribed at the time of subscribing, as shall have been paid by each stockholder on each and every share owned by him, and thereafter pay such instalments as may be due on each one hundred dollars, at the same times and in the same proportions, and under such regulations as now are or hereafter may be required of and adopted in relation to the individual stockholders on each share respectively held by them; *Provided* nothing herein contained shall authorize a forfeiture of any interest of the state in said bank in any wise whatever to the said bank.

No, for forfeiture of stock so subscribed shall be incurred.

Commissioners shall subscribe 1,000,000 when notified by Illinois Bank of acceptance.

Remaining 400,000 to be subscribed as other stock.

Commissioners may sell said stock.

SEC. 6. Said board of Fund Commissioners shall, so soon as notified by the Bank of Illinois at Shawneetown, of their acceptance and consent to the provisions of this act, as provided for in the first section of this act, subscribe on behalf of the state for one million of stock authorized to be subscribed by the first section of this act, and shall in all respects observe and conform to the provisions of the fifth section of this act, which are hereby expressly made applicable to their proceedings under this section, the proviso inclusive; the remaining four hundred thousand dollars may be divided into shares, and subscribed for, governed, and regulated in all respects as provided for in the original and supplemental acts incorporating and extending the charter of said Bank of Illinois at Shawneetown.

SEC. 7. For the purpose of carrying into effect the provisions of the last two sections, said board of Fund Commissioners may, from time to time, sell and dispose of the certificates of stock authorized to be issued by the second and third sections of this act, as the money may be needed from time to time.

Additional directors to be appointed by the legislature.

Their powers and duties.

Additional directors to be appointed by the legislature for Bank of Illinois at Shawneetown.

SEC. 8. In addition to the nine directors authorized to be elected by an act entitled "an act to incorporate the subscribers to the Bank of the State of Illinois," there shall be elected biennially by joint vote of both branches of the legislature, five other directors, who shall be citizens of this state, and whose rights, powers and duties shall be in all respects the same as those of the directors chosen by the stockholders.

SEC. 9. There shall be elected biennially, by joint vote of both branches of the General Assembly, nine directors of the Bank of Illinois at Shawneetown, whose rights, powers and duties shall be in all respects the same as those of the directors chosen by the stockholders of said Bank of Illinois at Shawneetown. There may be established by the said Bank of Illinois

at Shawneetown, three offices of discount and deposit, within the State, whenever the interest of the community or Bank require it for the purpose of discount and deposit, and the transaction of such other business as may be legally confided to them by said bank, under the provisions of its charter and this act; and to commit the management of all the aforesaid offices of discount and deposit under such regulations as they shall from time to time think prudent to adopt, to such number of persons as they shall choose, one of which offices of discount and deposit shall be permanently established at Jacksonville, with such amount of capital as the mother bank can safely supply under the provisions of this act, and another of said offices of discount and deposit shall be established at Lawrenceville and one at Alton, and in addition to the offices of discount and deposit as aforesaid, the said bank may establish two other offices of discount and deposit at such time and places, as may be deemed for the public interest.

Said bank may establish offices of discount and deposit.

One to be established at Jacksonville.

One at Lawrenceville and one at Alton.

SEC. 10. The dividends and profits declared and accruing upon, and from the stock, by the provisions of this act, authorized to be subscribed on behalf of the State in said banks, shall first be applied to the payment of the interest upon the loan or loans authorized by the provisions of this act, as the same becomes due, and the balance together with the premiums that shall be realized by the sales of certificates of stock herein authorized to be made, shall constitute a fund for, and be applied to, the payment of the interest which may be or become due and owing upon the loans effected under the authority of an act entitled an act to establish and maintain a general system of Internal Improvement, and shall be held inviolably, and applied solely for that purpose and none other. And the said board of Fund Commissioners shall adopt such measures as may be most expedient and proper for the payment of the interest of the said loans when due, and whatever balance of said dividends and profits as may remain from time to time after the payment of the interest as aforesaid, may be deposited by said board of Fund Commissioners in any bank or banks of this State, at such rates of interest as may be agreed upon until the same may be wanted, said banks to facilitate the transaction of the purposes contemplated in this section, opening therefor a separate account to the credit of such deposits with said board of Fund Commissioners.

Dividends and profits of said stock shall first be applied to the payment of interest upon loan. Balance and the premiums to pay interest on internal improvement loan.

Further powers of the board of Fund Commissioners. Deposit balance in bank. Duty of banks receiving such deposits.

SEC. 11. Said board of Fund Commissioners may deposit with the said banks, with reference to a fair distribution of the benefits of said deposits to the different sections of the State, all the funds borrowed under an act entitled an act to establish a general system of Internal Improvement, and all other monies provided for the use of the fund created by the act the title of which is hereinbefore last recited, not otherwise disposed of by law, until the same may be wanted in the progress of the works, or for the objects contemplated by said act, the said board of Fund Commissioners obtaining such rates of interest from said banks for the use of the same, as may be agreed upon, and said deposits shall be subject to the drafts and checks of said board of Fund Commissioners, whenever the same may be needed in the progress of said works, or for the objects contemplated by said act, payable

Fund commissioners may deposit in banks all funds borrowed under the act to establish and maintain a general system of internal improvement and other funds. Board may agree upon the rates of interest with banks.

Deposites shall be subject to draft Banks shall be the fiscal agents of the State.

Bank shall furnish quarterly statements of its condition to the board.

Shall furnish same to general assembly, at regular and called sessions.

Notes of Bank shall be paid where issued.

General assembly shall have the right by its committees to examine the bank and branches. Fund Commissioners may examine. Required to examine biennially and report. If the bank accepts provisions of this act, the Governor shall appoint directors. Any banks herein named may accept provisions of this act.

whenever they may direct. Said bank shall in all respects be, and they are hereby constituted, made and appointed the fiscal agents of the State in the collection, receipt, transfer, and disbursement of the Internal Improvement funds, subject to laws now in force, and hereafter to be made.

SEC. 12. Said bank shall furnish the said board of Fund Commissioners quarterly with statements of the amounts of capital Stock actually paid into their respective vaults, of all the debts due and owing to the said banks, of all the monies remaining on deposit, public and private, of all the notes of said banks outstanding and in circulation, the specie on hand or account of the same, together with all such other matters and things as may pertain to, and are connected with, the condition and solvency of said bank; they shall also lay before each house of the General Assembly, at every regular and called session within ten days after the meeting thereof, a general statement embracing all the information and facts contained in the said quarterly reports.

SEC. 13. All notes issued by said banks or their branches, or offices of discount and deposit, payable on their face elsewhere than in this State, shall be nevertheless payable at the said banks or branches, or offices of discount and deposit, which may have issued the same, in the same manner and under the same responsibilities as now are or hereafter shall be the notes of said banks or branches, or offices of discount and deposit, issued by them and made payable at their counters.

SEC. 14. The General Assembly shall have the right to examine by committee into the condition of said banks and their several branches and offices of discount and deposit, and all the books and accounts of said banks necessary to the examination hereby authorized, shall be submitted to any committee which may be appointed by the General Assembly for that purpose, and the Fund Commissioners shall also have the right to make a like examination into the condition of each of said banks, and they are required to make biennial examinations thereof, and make reports to each session of the General Assembly, which may be held after the making of such examinations.

SEC. 15. That if the banks in this act mentioned should accept the provisions of this act in the manner prescribed herein, during the recess of the Legislature, it shall be the duty of the Governor to appoint the directors upon the part of the State, who shall continue in office until their successors shall be elected, as prescribed in this act, and the provisions of this act shall be considered as applicable, jointly and severally, to said banks, and either of them may accept the same.

APPROVED, March 4th, 1837.

AN ACT to provide for the safe keeping and security of the Public Money. *In force 4th March, 1837.*

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That the Auditor of Public Accounts shall contract with the President and Directors of the State Bank of Illinois, to receive upon deposit and disburse the revenue of the State upon the terms and conditions following:

First. The bank shall open and keep accounts in the name of the State of Illinois, and receive upon deposit in their branch at the Seat of Government all money paid into the State Treasury, and receive upon deposit at their principal bank, and the other branches, all money which may be deposited in the said principal bank or any branch thereof, by any collector or agent of the State.

Second. The bank shall be bound to pay out the money deposited as aforesaid, either at the principal bank or any branch thereof, upon the warrant of the Auditor of Public Accounts.

Third. The bank shall be bound where money is deposited by the Treasurer, or any officer or agent of the State, to give a certificate of deposit, or receipt for the same in the name of the State of Illinois.

Fourth. The bank shall make no charge against the State for receiving and disbursing the revenue as aforesaid.

SEC. 2. Upon making the contract aforesaid, the Auditor shall notify the Treasurer thereof, and the Treasurer shall, without delay, deposit in the branch of the State Bank of Illinois at Vandalia all money and bank notes in his possession belonging to the State, and, at the end of every week thereafter, deposit in the said branch bank all money and bank notes received by him during the preceding week, and take certificates of deposit or receipts for the same.

SEC. 3. After the contract shall be made with the bank as herein required, all warrants issued by the Auditor shall be countersigned by the Treasurer as heretofore, and shall be made payable either at the principal bank or some branch thereof, to the order of the person in whose favor the same may be issued, and the place of payment shall be at the option of the payee.

SEC. 4. After making the contract aforesaid, it shall be lawful for any collector of public money, to deposit all money collected in the said State Bank or any branch thereof, and certificates of deposit or receipts in the name of the State of Illinois, shall be received by the Treasurer as cash.

SEC. 5. When the Treasurer shall make his monthly reports to the Auditor as required by the act entitled an act to consolidate the acts relative to the Auditor and Treasurer, and election of Attorney General, approved on the second of March one thousand eight hundred and thirty-three, he shall deliver to the Auditor certificates of deposit or bank receipts for all money paid into the Treasury during the preceding month. The Treasurer shall be entitled to a credit for the amount of said certificates and receipts, and the Auditor shall give a receipt for the same.

Auditor shall contract with state bank. Bank shall receive on deposit at the seat of government, all money paid into treasury, and at other branches all monies of collectors. Bank to pay out at any branch upon warrant of auditor. Shall give certificate of deposit for all sums. Shall make no charge for disbursing revenue. Auditor shall notify treasurer. Treasurer shall deposit at Vandalia every week. Shall take certificates. Warrants to be countersigned. Made payable at the principal bank or some branch thereof. Certificates of deposit to be received by the treasurer as cash. Treasurer shall deliver certificates of deposit or bank receipts, and Auditor shall give his receipt for same.

Auditor to settle with bank quarterly, shall take certificate of balance against the bank &c.

Auditor to publish quarterly statements.

If Treasurer shall fail to report to Auditor, Auditor shall give notice to the Governor who shall cause suit upon the bond of Treasurer.

Shall not affect the disposition of money received from United States.

20th sec. of act repealed

In force 21st July, 1837.

SEC. 6. The Auditor shall settle the accounts of the State with the bank quarterly; the bank shall be charged with all certificates of deposit and receipts which may have been delivered to the Auditor by the Treasurer, and shall be credited by all warrants paid, and if a balance be found against the bank at any such settlement, the Auditor shall take a certificate of deposit therefor, and if a balance be found against the State, the Auditor shall issue a warrant, to be countersigned by the Treasurer, in favor of the bank for such balance. At every such settlement, the certificates of deposit and receipts shall be returned to the bank, and the warrants paid by the bank shall be returned to the Auditor, and immediately after every settlement with the bank as aforesaid, the Auditor shall cause a statement of the amount of money received and paid out during the preceding quarter, to be published in the newspaper published by the public printer.

SEC. 7. If the Treasurer shall at any time fail to make a monthly report to the Auditor as required by law, and if it shall appear from any monthly report made by him, or from any settlement made with the bank, that the Treasurer is in default to the State, the Auditor shall give information thereof to the Governor, whose duty it shall be to cause suit to be instituted upon the bond of such Treasurer, and to coerce payment of all sums of money recovered.

SEC. 8. Suits may hereafter be instituted and maintained upon Treasurers bonds against the Treasurer and his securities, or against the Treasurer or any one of his securities, without first establishing the liability of the Treasurer by obtaining judgment against him alone.

SEC. 9. The provisions of this act shall not apply to or affect the disposition of any money which may be received by the late Treasurer from the United States, under the provisions of the act of Congress of the United States regulating the deposits of the public money, nor any monies borrowed for purposes of Internal Improvement.

SEC. 10. The 20th section of the act entitled an act to consolidate the acts in relation to the Auditor and Treasurer, and election of Attorney General, approved March 2d, 1833, is hereby repealed.

SEC. 11. This act shall take effect on the passage thereof.

APPROVED, March 4th, 1837.

AN ACT supplementary to an act to increase the Capital Stock of certain Banks, and to furnish means to pay the interest on a loan authorized by an act entitled "An act to establish and maintain a General System of Internal Improvements, approved March 4th, 1837."

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly, That the stock authorized to be*

subscribed to certain banks, by the act to which this is a supplement, shall not be alienated before the complete redemption of the bonds or certificates of stock authorized to be sold by said act: *Provided, That if upon the falling due of any of the principal of said bonds or certificates, that it shall be lawful for the State to sell a sufficient portion of said stock for the payment of said bonds or certificates.*

APPROVED, 21st July, 1837.

AN ACT to suspend, for a limited time, Certain Laws in relation to the Banks in this State.

In force 21st July, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That every provision of law, requiring or authorizing proceedings against any bank in this State, with a view to forfeit its charter, or wind up its concern, or which requires said bank to suspend its operations and proceedings, in consequence of its refusal to pay its notes or evidences of debt in specie is hereby suspended until the end of the next general or special session of the General Assembly, unless the banks shall have generally resumed specie payment at an earlier date, in which case the Governor shall give notice thereof by proclamation, and the said bank shall, within twenty days thereafter, also, resume specie payments: Provided, however, That to secure the benefit of the foregoing provision, said bank shall agree to conform to, and comply with, the following conditions, restrictions and limitations, viz:*

First—That it will not, either directly or indirectly, divide or pay among its stockholders, or to any person for them, any dividends, interest, or profits whatever, until it shall bona fide resume the payment of its notes and evidences of debt in specie; which dividends shall be retained in bank as an additional security to the holders of its notes.

Second—That it will not, directly or indirectly, during the suspension of specie payment, sell, dispose of, or part with any of its specie, or gold or silver bullion, except for the purposes of change to the amount of five dollars, or under the sum of five dollars.

Third—That it will furnish monthly, upon the oath of its president or cashier, to the Executive of the State, a full and complete statement of the condition and financial operations of said bank and branches, which shall be published in the newspaper of the State printer.

Fourth—That it will not, directly or indirectly, issue or put into circulation, during the period of its suspension of specie payments, any bank bill or note, or any evidence of debt by which the amount of its circulation shall be increased beyond the amount of capital stock actually paid in by the stockholders.

Fifth—That it will receive upon deposit any funds belonging to the State, which may be required to be so deposited, and pay

the same out upon the order of the proper officer, or agent of the State, in kind, free from charge; and also all funds heretofore deposited by the State.

Sixth. *Sixth*—That until the banks shall resume specie payments, citizens and residents of this State, who are indebted to them upon notes heretofore discounted, shall be allowed to pay their debts in instalments, at the rate of ten per cent. upon each and every renewal of the amount originally due, upon condition that such debtors shall execute new notes, with satisfactory security, and pay the aforesaid per cent. and the interest in advance, according to the usage and custom of banking. *Provided*, That this section shall not apply to notes or bonds assigned or endorsed to the bank.

Seventh. *Seventh*—That any violation of the provisions of this act, or any failure to comply with and conform to the same, shall subject the bank in default to a forfeiture of its charter.

Duty of president of bank to furnish governor with certificate. Governor shall issue proclamation. SEC. 2. Whenever any bank shall accept the provisions of this act, and the president thereof shall furnish the Governor with a certificate of the fact of such acceptance, under their corporate seal, the Governor shall issue a proclamation, stating the fact of such acceptance; and from and after the date of such proclamation, such bank shall be considered as being entitled to all the benefits hereby conferred, and bound by all the conditions, restrictions and limitations herein contained.

Rights of individuals not impaired by this act. SEC. 3. This act shall not be construed so as to impair any rights required by individuals, or to exonerate the bank from any liability to the holders of its notes, for the non-payment of the same; and the provisions of this section shall apply as well to notes heretofore issued as to notes which may hereafter be issued.

APPROVED 21st July, 1837.

BANK DEBTORS. *

AN ACT for the benefit of bank debtors.

In force Feb. 14, 1835.

Interest and part of principal remitted. SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That every person indebted to the State Bank (cashiers, purchasers of bank property and collectors, excepted,) shall be allowed to pay such debt or debts in three annual instalments, and that all interest now due, and twenty-five per cent of the principal, shall be remitted.

Persons desiring to take the benefit of this act, how to proceed. SEC. 2. That all persons desirous of taking the benefit of this act, shall apply to the Treasurer of the State, or any other collector or agent of the said State Bank, and cancel all obligations of indebtedness subsisting between such persons and the Bank, by giving their promissory notes, under seal, with approved security,

* See "State Bank."

payable as provided in the first section of this act, to the governor of the state for the use of the people of the state; and all promissory notes or other obligations thus executed, shall be in consideration of the forbearance and indulgence herein extended, and no plea to the consideration or the constitutionality of the bank, shall be considered valid in law, or received in any court, before which actions may be brought for the recovery of the debts or obligations hereby created.

APPROVED Feb. 13, 1835.

NOTE. This act relates only to the Old State Bank.

CANAL COMMISSIONERS.

AN ACT to abolish the office of Canal Commissioners.

In force March 1, 1833.

Office of canal commissioner abolished. SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the office of canal commissioners, created by an act entitled "An act to provide for constructing the Illinois and Michigan canal," approved January 22, 1829, and further by an act entitled "An act to amend 'an act to provide for the construction of the Illinois and Michigan canal,'" approved February 15, 1831, be, and the same is hereby abolished.

Shall deliver over all monies, books, &c. in their possession. SEC. 2. The board of canal commissioners shall, as soon as may be, pay over and deliver to the treasurer of this state, all moneys in their possession, belonging to, or connected with said canal fund; and shall in like manner, deliver to the auditor of public accounts, the books, papers, and vouchers, belonging to, or connected with said board of canal commissioners, to be filed and preserved in his office.

Treasurer of canal fund shall deliver as above. SEC. 3. And the treasurer of said board shall, in like manner, deliver and pay over to the treasurer of this state, all moneys in his hands belonging to the canal fund; and shall also deliver over to the auditor of public accounts all books, papers, and vouchers, having relation to the canal grant or fund, and the acts and doings of the said canal commissioners, in his hands, either as treasurer or secretary to the said board of commissioners, to be preserved as above.

Auditor, attorney general and treasurer to adjust the affairs of the said commissioners and treasurer. SEC. 4. The auditor of public accounts, attorney general, and treasurer of this state, shall, immediately after filing said papers, &c. proceed to examine and adjust the same; and if upon examination they shall find that any of the officers aforesaid have not faithfully and fairly accounted for, and paid over, all moneys which have come to their hands by virtue of their said offices, or have paid out any moneys not authorized by law; that said auditor and treasurer shall cause suit to be commenced upon the official bond of any such officer as aforesaid, as soon as practicable, and prosecute the same with reasonable diligence to final judgment and execution; and all moneys received from any of said officers shall

be deposited in the treasury of this state. The circuit court of Fayette county shall have and take jurisdiction of such suit, and for that purpose may direct all necessary process to any county in the state.

Shall report their proceedings to the legislature.

SEC. 5. It shall be the duty of the auditor, attorney general, and treasurer to make and report a detailed statement of their proceedings herein to the next general assembly of this state. This act to take effect and be in force from and after its passage.

APPROVED March 1st, 1833.

CANALS.

AN ACT for the construction of the Illinois and Michigan Canal.

In force, Jan. 9, 1836.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the governor of this state be, and he is hereby, authorized and empowered to negotiate a loan on the credit and faith of this state, as hereinafter provided, for the purpose of aiding in connection with such other means as may be hereafter received from the government of the United States, in the construction of the Illinois and Michigan Canal, a sum not exceeding five hundred thousand dollars, which shall be required to be paid at such times and by instalments, as the same may be needed in the progress of the said work, as near as the same can be estimated.

Governor authorized to negotiate a loan on the faith of the state.

Certificates of stock.

Faith of the state pledged.

Transferring of stock.

Certificates of stock to be sold.

Monies to be deposited in bank at interest.

SEC. 2. The governor shall cause to be constituted certificates of stock for the said loan, to be called the "Illinois and Michigan Canal Stock" signed by the Auditor, and countersigned by the Treasurer, bearing an interest not exceeding six per cent. per annum payable semi-annually, at the bank of the state of Illinois or any of its branches, or at some bank in the cities of New York, Philadelphia, Boston or either, as may be agreed upon, and reimbursable at the pleasure of the state, at any time after the year one thousand eight hundred and sixty, and the faith of the state is hereby irrevocably pledged for the payment of the stock hereby created, and the interest accruing thereon.

SEC. 3. The governor shall take and use all proper means and measures for the transferring of the said stock.

SEC. 4. It shall be deemed a good execution of the said power, to borrow, for the governor to cause the said certificates of stock, when created to be sold; *Provided*, that the said stock shall not in any case be sold for less than its par value.

SEC. 5. It shall be the duty of the governor to cause the said monies from time to time, when paid or advanced, to be deposited in some safe bank or banks until wanted for use, at the best interest that can be obtained for it, to be drawn out as hereinafter provided, taking therefor the proper securities for the safe keeping of the same.

SEC. 6. The money thus loaned, the premiums arising from the sale of any stock thus created, the proceeds of the canal lands and town lots, and all of the monies in any way arising from the contemplated canal, shall constitute the canal fund, and shall be used for canal purposes, and for no other whatever, until the said canal shall have been completed; *Provided*, that nothing herein contained shall be so construed as to prevent appropriations from being made, out of the said fund for semi-annual payment of the interest upon the canal stock herein authorized to be created, and the governor is hereby authorized to cause the said interest, to be paid out of the said fund.

What constitutes canal fund.

Proviso.

SEC. 7. The governor of this state by and with the advice of the senate, shall appoint three practical and skilful citizens of this state to constitute a board, to be known by the style and description of "the Board of Commissioners of the Illinois and Michigan Canal" and he shall designate one of said commissioners to be president thereof, one to be treasurer and one to be acting commissioner; whenever any vacancy shall occur in the said board of commissioners by death resignation or from any other cause the governor of this state shall fill such vacancy during the recess of the legislature, and the governor shall have power to remove from office any canal commissioner for good cause which he shall make known in a communication to the next ensuing General Assembly.

Governor to appoint board.

Vacancy, how filled.

SEC. 8. The board of commissioners to be appointed as aforesaid shall hold their office until the first Monday in January 1837, and thereafter the said board of commissioners shall be biennially appointed in such manner as the legislature may from time to time direct.

Term of service.

SEC. 9. The acting commissioner shall be allowed a salary of twelve hundred dollars per annum, and the rest of the board shall each be allowed a compensation of three dollars per day while necessarily employed in the business of the canal.

Salary.

SEC. 10. The said board of commissioners is hereby constituted a body politic and corporate with full power and authority in their corporate name to contract and be contracted with, sue and be sued, defend and be defended, plead and be impleaded, in all the matters and things relating to them as canal commissioners, and they shall have and use a common seal of such device as the governor may direct.

Incorporated.

SEC. 11. The board shall appoint a secretary, whose duty it shall be to keep a true record of all their proceedings; they shall hold quarter yearly meetings, and special meetings whenever any two of them, or the acting commissioner may desire it, any two of them shall constitute a quorum to do business.

To appoint a secretary.

SEC. 12. Before entering upon the duties of their office each of the said commissioners shall make oath or affirmation, faithfully, honestly, and truly to execute and discharge all the duties and obligations herein imposed upon them, and each of them as canal commissioners, and they shall severally give bonds to the governor and his successors in office for the use of the state, in the sum of ten thousand dollars with sufficient securities, for the faithful discharge of the duties imposed upon them by this act; *Provided*, *Proviso.*

Commissioners sworn.

that the governor may at any time require additional bonds of said treasurer, whenever he may think that the safety of the funds require it.

*When money due treasurer may draw check on bank. Amended.**
 SEC. 13. Whenever all or any part of the money upon any contract shall become due, it shall be the duty of the treasurer to draw his warrant or check, therefor in favor of the contractor, upon the bank or banks in which the canal fund shall have been deposited, which warrant or check, shall be countersigned by the acting commissioner and shall be under the seal of the board.

Commissioners to obtain a quarterly report from bank and lay it before board.
 SEC. 14. It shall be the duty of the acting commissioner to obtain from the cashier of the bank, or banks, in which the said fund shall have been deposited, a quarterly report, exhibiting a true account of all monies received in deposit on account of the canal fund and paid out of the said fund during the previous quarter, which report shall be laid before the board of canal commissioners, and within twenty days thereafter, shall be examined by the said board, and compared with the accounts of the treasurer and an entry shall be made in the books of the said board that the said examination has been made by them, and that the two accounts correspond, if such be the case, and each commissioner present shall sign his name to the record of such examination.

Commissioners to contract for materials and labor.
 SEC. 15. It shall be the duty of the acting commissioner;
 1st. To make under the direction of the board, all necessary contracts for the supply of material, and the performance of labor.

Conduct of all officers.
 2nd. To inquire into the official conduct of the agents, clerks, superintendents, and all subordinate officers and to receive and hear all complaints that may be preferred against them.

To enforce duties. To examine state of canal and have superintendance thereof. Description.
 3d. To enforce the faithful execution by all persons concerned, of the duties and obligations imposed upon them by this act.

4th. To examine frequently and carefully, into the state of the canal, and the progress of the works thereon.

5th. To have the immediate care and superintendance of the canal and all matters relating thereto.

Proviso.
 SEC. 16. The said canal shall not be less than forty-five feet wide at the surface, thirty feet at the base, and of sufficient depth to insure a navigation of at least four feet, to be suitable for ordinary canal boat navigation, to be supplied with water from Lake Michigan and such other sources as the canal commissioners may think proper, and to be constructed in the manner best calculated to promote the permanent interest of the country; reserving ninety feet on each side of said canal, to enlarge its capacity, whenever in the opinion of the board of canal commissioners, the public good shall require it; *Provided*, that all persons who have purchased, or shall hereafter purchase lands fronting the said canal shall be permitted to lease from the said board the said reserved ground on each side of said canal, from year to year, or until the said ground shall be wanted to enlarge the capacity of said canal, for the best price that can be obtained, to be paid into the canal fund.

* See act of March 2d, 1837.

SEC. 17. They shall take efficient and proper measures for the immediate construction of the said canal; shall put such parts of it as they may deem proper under contract as herein provided and shall have the general care and superintendance thereof. *Measures for constructing.*

SEC. 18. They shall inspect and examine into the accounts, books, state of the treasury, and all of the proceedings of the treasurer and of the acting commissioner. *Furnish means.*

SEC. 19. They shall furnish the acting commissioner with all proper means and facilities, that may be necessary to enable him to discharge the duties herein imposed upon him. *Powers.*

SEC. 20. They shall have full power and authority in their good judgment to do, in relation to the construction and completion of the said canal, all things, not otherwise herein provided for. *May use lands water stream.*

SEC. 21. It shall be lawful for them to enter upon and use any lands, water, streams and materials of any description necessary for the prosecution of the works contemplated by this act.

SEC. 22. They may employ such and so many, agents, engineers, surveyors, draftsmen and other persons as they may judge necessary to enable them to discharge their duties as commissioners, and may pay such compensation as they shall judge reasonable to each person so employed. *To employ agents, engineers.*

SEC. 23. Public notice shall be given of the time and place at which proposals will be received for entering into contract; which notice shall be previously published for at least six weeks, in a newspaper printed at Chicago and in such other papers either in this state or elsewhere as may be deemed proper. *Notice of entering into contracts.*

SEC. 24. Proposals for contracts shall be sealed and shall be for a sum definite and certain, as to the price to be paid or received, and shall be let to the lowest and most responsible bidder, accompanied with good and sufficient security for the faithful performance of such contract. *Proposals.*

SEC. 25. And it shall be the duty of the commissioners to let out all contracts for labor on conditions to be expressed in the contracts, as will authorize said commissioners to declare all contracts to be abandoned and to re-let the same to more efficient contractors, whenever in the opinion of the acting commissioner, or the principal engineer on the work, the contractor or contractors refuse or neglect to prosecute his or their contract, with a force proportionate to the amount of work to be performed and the time within which the same, by the terms of the contract is required to be completed; and in all cases where an unfinished contract shall be declared to have been abandoned as aforesaid, the percentage on the amount of work performed, which the commissioners are required to retain until the completion of the job, shall be forfeited to the use of the canal fund. *To let out contracts.*

SEC. 26. All contracts concerning the contemplated canal shall be made in writing, under the seal of the board, and of each contract, three copies shall be executed by the parties one of which shall be retained by the board, and one shall be immediately forwarded to the auditor of public accounts, and by him filed in his office. *Contracts to be returned to auditor.*

SEC. 27. All materials procured or partially procured under

exempt from execution. any contract with the commissioners, shall be exempt from execution; but it shall be the duty of the commissioners to pay the money due for such materials to the judgment creditor of the contractor under whose execution such materials might have been sold upon his producing to them due proof that his execution would have so attached, and such payment shall be held a valid payment on the contract.

Death of contractors. SEC. 28. In case of the death of any canal contractor who shall at the time of his decease, be indebted to any laborers for work done on the canal, it shall be lawful for the board, if they think proper to pay such laborers out of any money that may be due to the deceased contractor, and the receipt of such laborers shall be a good voucher in offset to the sum due the deceased contractor, from the board, on the final settlement between them and his executors or administrators; *Provided*, that the said persons shall first obtain a judgment against the administrator of such deceased contractor, and produce a certificate from the court, judge or justice of the peace, that the judgment was rendered for work done on the canal or for materials furnished therefor and for no other cause.

Rules and regulations. SEC. 29. The board shall from time to time make such rules and regulations, not inconsistent, with the laws of this state, in respect to the persons employed about the canal, injury done to the said canal or locks, and the management and navigation of the same, and impose such forfeitures of money for the breach of such rules and regulations, as they may judge reasonable, but no forfeiture imposed, shall for a single offence exceed the sum of fifty dollars over and above the amount of actual damage done.

To be posted. SEC. 30. They shall cause a sufficient number of such rules and regulations to be posted up for public inspection, and shall transmit a copy of them, from time to time to the governor, as they may be made, in their next quarterly and annual reports.

Filed in Auditor's office. SEC. 31. All rules, regulations, and forfeitures, established by them as aforesaid, shall be filed in the office of the auditor, and a copy thereof certified by him under his hand and seal of office, shall be received in all courts of law as due proof, that such rules, regulations and forfeitures were by them established.

To select canal route, town site and lay off lots. SEC. 32. The commissioners shall examine the whole canal route, and select such places thereon as may be eligible for town sites, and cause the same to be laid off into town lots, and they shall cause the canal lands in, or near Chicago, suitable therefor, to be laid off into town lots.

To sell lots in Chicago and Ottawa. SEC. 33. And the said board of canal commissioners shall on the twentieth day of June next, proceed to sell the lots in the town of Chicago and such part of the lots in the town of Ottawa, as also fractional section fifteen, adjoining the town of Chicago, it being first laid off and subdivided into town lots, streets, and alleys, as in their best judgment will best promote the interest of the said canal fund; *Provided always*, that before any of the aforesaid town lots shall be offered for sale, public notice of such sale shall have been given in such newspapers, not less than five in number, including the one printed at Vandalia, either in this or other states as the board may think best, at least eight weeks prior

Proviso.

to any sale; *Provided further*, that if no sale be made on the day herein named, such sale may be made at any time thereafter, upon giving the notice and upon the terms herein required.

SEC. 34. It shall be the duty of the canal commissioners, before the day appointed for any sale of lots, to make a list of the lots intended to be offered, describing them by their numbers, and value, each lot separately and certify the same under their hands and seals, which list and certificate shall be filed with the treasurer and preserved, and no lot shall be sold for less than the valuation; and all lots remaining unsold shall be again advertised for sale in the manner aforesaid, and said commissioners shall continue from time to time to advertise for sale all lots remaining unsold, at any public sale, until the whole shall be sold, and no lot shall be sold, except at a public sale, to the highest bidder; *Provided*, that all persons who may have made improvements upon any of the lots authorized to be sold, shall be permitted to remove such improvement at any time before the day fixed for the sale of any such improved lots, being responsible for all unnecessary damage done or suffered by such removal.

To make out a list of lots, &c.

Certify the same to the treasurer.

2nd sale.

Proviso.

Improvements may be removed before sale.

SEC. 35. The terms of sale shall be as follows, to wit: one fourth of the purchase money to be paid in advance at the time of purchase, and notes taken for the payment of the residue in three equal annual instalments, bearing an interest of six per cent. per annum, payable annually in advance, and a failure to pay such interest or the residue of such principal within twenty days after the same or any instalment thereof becomes due, shall forfeit to the state for the benefit of the canal fund, the said lot or lots, and all claim thereon; and if any purchaser before forfeiture, shall commit unnecessary waste, upon any lot or lots not paid for, he, she or they, so offending, shall be subject to an action at law for damages to said commissioners, and a certificate of the acting commissioner of any forfeiture, shall authorize the sheriff of the proper county, with the posse comitatus, to give such board possession of such forfeited lot or lots, on behalf of the state, and the lot or lots so forfeited as aforesaid shall be re-sold without let or stay, extent of time or subsequent relief of any kind whatever, the same bringing the appraised value.

Terms of sale.

Waste.

SEC. 36. In all sales of canal lots, the secretary and treasurer shall act as register, and receiver, and shall be governed by the same rules, that now govern registers and receivers in the United States' land offices in this state, except as is herein provided.

Secretary and Treasurer to act as register and receiver.

SEC. 37. It shall be the duty of the treasurer upon the payment of the purchase money, to grant to the purchaser or purchasers, a certificate, containing a description of the land or lots purchased, and the price for which the same was sold, and shall forward a duplicate of such certificate to the auditor of the state, who shall record the same; and the person holding such certificate, shall upon presenting the same to the governor receive a patent for the land described therein, signed by the governor, and countersigned by the secretary of state, with the seal of the state affixed thereto.

*Treasurer to grant certificate. *Amended.*

SEC. 38. All monies paid to the treasurer for the purchase of

Monies to

* See act of Jan. 16, 1837, title "Conveyances."

be deposited in bank. any canal lands or lots shall be by him immediately deposited in some bank, under the direction of the governor, for the payment of the interest of the canal loan, and for work done on the canal.

No commissioner to purchase lands or lots. SEC. 39. None of the board of canal commissioners shall be allowed to purchase any of the canal lands or lots herein authorized to be sold, nor shall they, or either of them directly or indirectly, be concerned in any such purchase or have any manner of interest therein, and all sales in which the said commissioner, or any of them shall be in any way interested, shall be absolutely null and void, the purchase money shall be forfeited, and the land shall revert to the canal fund; but said canal commissioners or either of them, are hereby required and authorized to bid for any tract or lot of land, so offered for sale, if in their opinion the interest of the canal fund requires it, and in such case the bid shall be in the name of such commissioner for the use of the state, and the said lot or tract shall revert by such bid to the state for the use of the canal fund, and shall be subject to sale thereafter, as other lots or tracts are now, or hereafter may be by law subject to sale. Any commissioner who shall be guilty of a violation of the provisions of this section, shall be deemed to have perpetrated a fraud, and upon indictment and conviction thereof, in any court having competent jurisdiction, shall be punished by forfeiture of his office, and fined in a sum not less than one thousand nor more than five thousand dollars; *Provided*, that a prosecution for such offence shall be commenced, within ten years after the commission of the same.

Commissioner to bid for lands or lots for the state. SEC. 40. If any two or more persons shall combine themselves together for the purpose of lessening competition at the sale of any of the canal lands or lots, or if they shall agree or have any understanding among themselves, that they will not bid upon one another, at any such sale for the purpose of obtaining the said canal lands or lots at a low price; the same shall be deemed a fraud and any person or persons convicted thereof, in any court having competent jurisdiction, shall be fined in a sum not less than one hundred nor more than one thousand dollars, one moiety thereof, to the use of the person informing, and the other moiety to the canal fund, and any patent issued for any lands or lots purchased as aforesaid shall be absolutely null and void; the money paid therefor shall be forfeited, and the lands or lots so purchased shall revert to the canal fund. And it is hereby declared to be the duty of the state's attorney to prosecute for all such offences; *Provided*, that all such prosecutions, shall be commenced within ten years after the commission of the offence.

Persons combining at sale not to bid against each other. SEC. 41. The revenue arising from the Illinois and Michigan canal, and from the lands granted, or that may hereafter be granted to the state of Illinois, by the Congress of the United States, for the construction of the said canal, and the nett tolls thereof, are hereby pledged for the payment of the interest accruing on the stock, that may be created in pursuance of this act, and for the reimbursement of the principal of the same.

Revenue, tolls, &c. pledged. SEC. 42. The board of commissioners, shall, quarterly, viz: on the first Monday of March, June, September and December in each year, make a minute and particular report to the governor, which report shall set forth in a plain and intelligible manner, all of

Make report to the governor quarterly.

their acts and doings in relation to the said canal, and the canal lands and lots, all of the money received and expended, the work done, and the price allowed for the various kinds of work, the contracts made, with whom made, and the security given, the number of engineers, draftsmen, clerks and agents, of every description by them employed, and the amount of compensation paid to each, the progress of the canal, their contemplated plans for the next three months, with an estimate of the probable amount of money, that will be required to be expended for canal purposes, during that time, together with such other matters and things as they may see fit to add; and also the amount, time and rate of any loan made by virtue of this act, which report or the outlines thereof, the governor shall cause to be published.

SEC. 43. They shall annually on the first Monday of December, make a report to the governor, setting forth all of their act and doings in relation to the canal and canal lands and lots, during the previous year, in like manner as is required of them in their quarterly reports, containing such statements and estimates for the year as their quarterly reports do for the quarter. *Annual report.*

SEC. 44. The said canal shall commence at or near the town of Chicago, on canal lands and shall terminate near the mouth of the little Vermillion in La Salle county and on land owned by the state. *Commencement and termination.*

SEC. 45. The act, entitled an act for the construction of the Illinois and Michigan canal, approved February the tenth eighteen hundred and thirty-five, is hereby repealed, and any canal commissioner heretofore appointed under any law of this state be and the same is hereby declared to be out of office from and after the passage of this act, any law to the contrary notwithstanding. *Act repealed.*

APPROVED, Jan. 9, 1836.

AN ACT to amend an act entitled an act for the construction of the Illinois and Michigan Canal, approved Jan. 9th, 1836. *In force March 2d, 1837.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That there shall be elected at the present session of the legislature, by the joint vote of both houses, three practical and skillful citizens of this state, to constitute the Board of Commissioners of the Illinois and Michigan Canal, one of whom shall be designated as the President, one as Treasurer, and one as the Acting Commissioner of said board. The said President and Treasurer, in addition to the other duties required of them, by the act to which this is an amendment, shall also whenever the public good may require the same, exercise all the duties and perform all the services required by said act, of the acting commissioners. Each and every one of the commissioners aforesaid, when in the discharge of the duties of acting commissioner, shall be subject to the order of the board. *Election by vote of both Houses for three Commissioners. Additional duties of President and Treasurer. Shall perform the duties of acting Commissioner.*

Duties of Commissioners.

Plan of 1836.

Shall require a survey of route Engineer shall report to board of Commissioners. If water sufficient to supply a canal of same size as one now contemplated.

Engineer to be employed shall take oath of his estimates and surveys. Said board shall authorize survey of canal route. Work to be constructed when state of Indiana shall undertake. Commissioners shall take and subscribe oath.

Commissioners shall have power to sell parts of canal lands in Chicago township, to produce 1,000,000 of dollars. Proviso.

Commissioners shall have power.

SEC. 2. That it shall be the duty of the commissioners authorized to be elected by this act, to proceed immediately and without delay, to the prosecution and final completion of said canal, upon the plan proposed by the act to which this is an amendment, and upon the plan set out upon by the commissioners in the year 1836, in all respects.

SEC. 3. That the said commissioners shall require a survey and examination of the route of said canal as now established, by some skilful engineer, who shall report to the said board of commissioners, who shall also report the same to the next session of the General Assembly. The said examination shall be made with a view of ascertaining whether there is a sufficiency of water within the legitimate authority of the state of Illinois, to use to supply a canal of the same size and dimensions, as the one now contemplated to be constructed upon the summit level of said line of canal, the said engineer authorized to be employed under this act, shall take such oath as to the correctness of his estimates, surveys, and conclusions as are usually required of engineers.

SEC. 4. Said board shall also as soon as convenient, authorize a survey and estimate to be made of the route of a canal, diverging from the main trunk of the Illinois and Michigan canal, through the Auguste-nash-ke Swamp and Grassy Lake, to intersect the Calumet river at the nearest practicable point, the said work to be constructed whenever the state of Indiana shall undertake a corresponding work, connecting her system of internal improvements with the Illinois and Michigan Canal.

SEC. 5. Said commissioners when elected, before entering upon the duties of their office, shall take and subscribe the following oath, viz: I do solemnly swear in the presence of Almighty God, that I do not own land on or adjoining the canal route, and that I am in no manner, either directly or indirectly, interested in any land within ten miles of said contemplated canal, further than a common interest as a citizen of this state, and that I will not buy or trade in any land on the route, or within ten miles of the same, during the time that I act as canal commissioner, and that I will faithfully discharge the duties of canal commissioner according to law, and the best of my abilities: so help me God.

SEC. 6. The said commissioners shall have power to sell such parts of the canal lands in the township in which Chicago is situated, and such alternate lots in such town sites at the termination, and along the canal route, as are or may be laid out by them, as may be necessary to produce the sum of one million of dollars, such sales shall in all respects be made in the same manner and upon the same terms as the sales authorized by the act to which this is an amendment, *Provided*, That said sales may be made at such place or places, as the said commissioners may deem for the interest of the state.

SEC. 7. The said commissioners, shall have power to cause surveys of such town sites as they may select, to be laid out by such person or persons as they may think proper, the plats of such towns certified by such person or persons so employed, and said commissioners shall be recorded in the Recorder's Office in the county where such town is situated, and such plat so certified and

recorded or an attested copy thereof, shall be evidence in any court of law or equity in this state, and plats of such town sites, sub-divisions of sections or surveys, which have been made and certified by the former commissioners, shall also be recorded in the same manner, and have the same validity as aforesaid.

SEC. 8. The said commissioners shall construct a navigable feeder from the best practicable point on Fox river, to the Illinois and Michigan canal at the town of Ottawa, and such basins or lateral canal connecting the Illinois river with said canal at that point, as in their opinion will most enhance the value of the property of the state.

SEC. 9. That the Judge of the Circuit Court within whose circuit the said canal lands are situated, shall on or before the first Monday in June next, appoint three commissioners citizens of this state, who shall not be interested in any lands within the district of country through which said canal passes, and who do not reside in said district, to be a board for the appraisement and determination of all questions of damages which may arise from the construction of said canal, a certificate of whose appointment under the hand of the said Judge, shall be recorded in each county in which any of said canal lands lie. It shall be the duty of said commissioners, whenever requested by the board of canal commissioners, to examine into all questions of damages which may arise between said canal commissioners, and any individual or individuals to make reports within twenty days after such examination in writing to the said canal commissioners, and file a copy of such reports in the clerks office of the circuit court of the county in which the land may lie, on which any damages may be claimed, which reports shall contain a full account in writing of said claim, the manner in which it may arise, and all such testimony as may be taken by them in relation to the same; also an assessment of the damages if any are awarded, accompanied by a description of the property to be surrendered by such individual to the State, where the question of damages may relate to the right of way, or surrender of land for the use of Hydraulic, or other purposes; upon the return of said report and assessment of damages aforesaid, the said circuit court at its succeeding term, if in its opinion the damages assessed are not too high, and if no objection be made to the same, shall cause an order to be made of record, directing the said board of canal commissioners to pay to such individual or individuals, in whose favor he may decide, such sum as may be awarded for his or their damages as aforesaid, with such costs as such party may have expended in the defence of such claim for damages, to be certified by the court, *Provided however*, That if upon examination of such returns, assessment and testimony furnished as aforesaid, by said commissioners, if the said court shall be of opinion the said assessment is too high, or the individual or individuals in whose favor such assessment shall be made, shall be dissatisfied with the same, the said court shall proceed to hear and determine the question of damages in such manner as it may deem equitable and just, and the said court is hereby vested with full power and jurisdiction, to make all orders and decrees in the premises, and to enforce their observance, necessary to carry into full effect all, or any decision

Attested copy of plat shall be evidence in any court of law or equity.

Navigable Feeder to be constructed.

Judge of circuit court shall appoint three commissioners citizens of this State not residing in said district. Certificate of appointment under hand of Judge shall be recorded.

Commissioners to make report within twenty days after examination in writing.

Description of property to be surrendered to the State.

Court to direct commissioners to pay individuals in whose favor he may decide.

Proviso.

Court shall hear and determine question of damage. Court vested with full

power to make all orders and decrees in the premises.

Commissioners shall insist upon the right of the State to the right of way. Reservation of act passed Jan 22, 1829. If courts decide against this right.

Compensation of persons appointed to assess damages.

Board to deliver copies of their reports to each of the parties.

Shall certify the fact. Shall be evidence of notice.

Court may continue causes & questions. Commissioners shall cause plats of

Chicago & Ottawa, to be recorded. Power to execute all duties heretofore required of them.

Proviso. Governor to borrow on credit of the State, the sum of \$500,000. Said sum shall be laid out in the year 1838, in addition to moneys.

which may be made, *Provided*, That appeals shall be allowed to the Supreme Court as in other cases, *And provided also*, That the court shall have power to compel all persons to pay all costs occasioned by their objections or exceptions to assessments, which are not sustained by the court, and the court shall also have power in all cases to make such orders in respect to cost as may be deemed equitable and just. In assessing damages, regard shall be had as well to the benefit as the injury arising from the construction of the canal.

SEC. 10. The canal commissioners shall insist upon the right of the State to the right of way, through and upon all lands heretofore sold or granted by the State, and also the use of all water and materials required in the construction of the canal under the reservation contained in the tenth section of the act passed January the 22d, 1829, providing for the construction of said canal, and under the reservation contained in subsequent laws on the same subject; but if the courts shall decide against this right, then the same mode of proceeding shall be had in reference to said lands, water and materials as in other cases.

SEC. 11. The persons appointed to assess damages, shall be allowed by the court a reasonable compensation for their services, not to exceed three dollars per day, to be taxed in the bills of costs, and paid as other costs.

SEC. 12. The Board of assessment shall in all cases deliver copies of their reports to each of the parties interested or their attorney, before filing a copy with the clerk, as herein required, and they shall certify the fact of delivering such copies upon the copy filed with the clerk, as aforesaid, and the delivery of such copy shall be evidence of notice, and the court shall proceed to adjudicate upon the rights of all parties so notified, without requiring any other or further notice to be given; for good cause shown the court may continue all causes and questions arising under this act, from term to term as in other cases.

SEC. 13. The canal commissioners shall cause the plats of the towns of Chicago and Ottawa, by which they were governed in selling lots in said towns, to be recorded with the certificates of the late canal commissioners, endorsed thereon as to the identity of said plats. They shall also have power to execute and perform all duties heretofore required of canal commissioners in relation to alterations in the survey of the town of Ottawa, *Provided*, That no rights acquired by individuals shall be affected thereby. The plats of said towns, or certified copies thereof, shall be admitted as evidence in all courts or places whatsoever.

SEC. 14. The Governor of the State, when he shall be advised of its necessity by said canal commissioners, shall borrow upon the credit of the State, the sum of five hundred thousand dollars on the same terms and in the same manner prescribed in the act to which this is an amendment, which said sum shall be expended on the canal in the year 1838, in addition to the moneys arising from the sale of the canal lands, and which may be then in the treasury of said Board.

SEC. 15. That for the purpose of inviting and promoting fair competition in the letting of contracts, so much of the act to

which this is a supplement as requires the board of canal commissioners to demand and receive security from contractors for the execution of contracts, be, and the same is hereby repealed; and the Board shall let all contracts to the lowest responsible bidders for the work, under such regulations and restrictions, to be fixed upon and published by the Board, as shall effectually insure the punctual commencement, and faithful execution, progress, and completion of the contracts, and to protect the rights and interests of the State, and to insure the faithful execution and completion of contracts, shall retain in their hands, during the progress of the work, at least fifteen per centum, and not more than thirty per centum of the value of the work actually performed, until the full completion of the contracts.

SEC. 16. Monthly estimates of the amount and value of the work executed, shall be made out during the progress of the work, under the directions of the Board, or principal engineer on the line; and upon such estimates being filed in the office of the Board, not less than seventy per centum, nor more than eighty-five per centum of said estimated value, shall be paid to the contractors, and the residue shall be retained until the completion of the contract, as provided for in the foregoing section, *Provided*, That this section and the preceding section, shall not be construed to apply to existing contracts, or to the bonds given under the same.

SEC. 17. The commissioners to be elected under the provisions of this act, shall severally execute bonds in the sum of ten thousand dollars, with such security as shall be approved by the Governor, for the faithful discharge of their duties as canal commissioners, in addition to which the treasurer shall give bond in such sum and with such security as shall be approved by the Governor for the faithful management, safe keeping and disbursements of the canal funds, that may at any time come into his hands.

SEC. 18. Every part of the act to which this is an amendment that does not conflict with the provisions of this act, shall be and remain in full force, and govern the commissioners to be elected under the provisions of this act, in their duties as canal commissioners, and so much of said former act as conflicts with this act, is hereby repealed.

SEC. 19. So much of the thirteenth section of the act to which this is an amendment as requires warrants or checks to be countersigned by the acting commissioner, and to be under the seal of the Board, is hereby repealed.

APPROVED, 2d March, 1827.

NOTE. This act is amended by acts of July 21, 1837.

Part of act repealed.

Regulations & restrictions, to be published.

Shall retain 15 per cent. & not more than 30 to protect the State.

Estimates to be made of work executed under the direction of board of Engineers.

Not less than 70 nor more than 85 per cent. shall be paid to contractors until work is completed.

Commissioners shall execute bonds in the sum of \$10,000 with security.

Treasurer to give additional bond and security to be approved by the Governor.

All of former act conflicting with this act repealed.

So much of 13th section is hereby repealed.

CANAL LANDS.

In force Feb. 9, 1835. **AN ACT to prevent trespassing on the Canal Lands of this State.**

Penalty for such trespasses. SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter, if any person or persons shall, without legal authority, go upon the Canal lands belonging to this State, and there cut, fell, box, or in anywise destroy any tree or trees or other timber, standing or lying on said Canal land, or carry or haul away any stone or coal from said lands, shall, upon indictment, be fined in any sum not exceeding one hundred dollars for each offence.

Duty of Sheriffs & other officers in relation thereto. SEC. 2. It shall be the duty of every sheriff, coroner, constable, and justice of the peace in the counties of this State, where the aforesaid Lands lie, to take notice of, and present all and every person, so offending, to the next grand jury of their respective counties in which the said offence or offences against the first section of this act, has been committed.

Duty of prosecuting attorney. SEC. 3. It shall be the duty of the prosecuting attorney in the sixth judicial circuit of this state, to cause this act to be given in charge to the respective grand juries, (in the counties in which said lands are situated,) whose duty it shall be to inquire into, and make presentments of all persons who may have violated the provisions of this act.

This act to be in force from and after its passage.

APPROVED, Feb. 9, 1835.

In force March 4th, 1837. **AN ACT to protect the Canal lands against trespassers.**

Agents to be elected to prevent trespasses. SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That there shall be elected by joint vote of both houses of this General Assembly, two agents to go and remain upon the canal lands of this State, for the purpose of preventing and detecting all persons who have or may trespass upon said lands, and of instituting and attending to the prosecution of suits for the same.

Shall visit all residents. SEC. 2. The said agent shall visit every person residing upon, or cultivating any part of the canal lands, and upon the execution of a bond by any such person, as hereinafter required, any one of the agents is hereby authorized to deliver to such person a written permit to remain upon the land, or to continue to cultivate the same, until the said land is advertised for sale by the State, free from any charge of rent, and to use for fuel, only the timber and wood lying upon the ground, *Provided,* That said permit shall not extend to authorize any person to use wood off of more than six hundred and forty acres of timbered

Proviso.

land; and no person shall be permitted to enclose or cultivate any timbered land, nor to cultivate more than six hundred and forty acres of prairie land. *What timber may be used.*

SEC. 3. Persons who reside upon their own land, and cultivate canal lands, shall be considered as coming within the provisions of this act; but no such person shall be allowed to use wood, lying or being upon canal lands.

SEC. 4. Every person to whom a permit is given as aforesaid, shall execute a bond to the State of Illinois, with one or more responsible persons as securities, in the penalty of five hundred dollars, conditioned as follows: *Bond with securities. Penalty.*

"The condition of this bond is such, that whereas the State of Illinois has given to the said _____ a permit to (here state the substance of the permit,) now if the said _____ shall well and truly comply with the terms of said permit and the provisions of the law under which the same was given, then this bond to be void, otherwise to remain in full force and effect.

SEC. 5. The obligees of any bond executed as aforesaid, shall be considered as bound, first, that the person to whom the permit is given, will not use any timber, or tree of any description, standing or growing upon canal lands, for any purpose whatever; second, that he will not use for fuel, any timber or wood of any description, situated upon any canal lands, except that described in the permit; third, that he will not permit any person to use or take any tree, timber or wood off of the land described in the permit; fourth, that he will surrender the possession of the lands described in the permit, to the agent of the State, together with all improvements thereon, whenever said lands shall be advertised for sale; fifth, that he will not sell or transfer his right of possession, nor rent or lease the same for a longer time than one year; sixth, that in case of a violation or breach of any condition upon which the permit is given, that the agent of the State shall have the right to take possession of the premises, with all improvements thereon. *Obligees. Not to permit persons. Surrender to be made. Agent to take possession.*

SEC. 6. If any person shall after this act takes effect, cut, fell, box, bore, injure or destroy, any tree or sapling of any description whatever, standing or growing upon any land described in any permit, hereby authorized to be given, he or she shall be liable to pay for every tree or sapling so cut, felled, boxed, bored, injured or destroyed, any sum not less than five dollars, nor more than twenty dollars, which may be recovered by action of debt in favor of the person to whom the permit is given, before any Justice of the Peace or Circuit Court having jurisdiction of the amount claimed; and the recovery shall be for the use of the person, in whose name the suit is instituted. *Penalty for injury done.*

SEC. 7. If any person shall after this act takes effect, purchase, receive, or use any tree, sapling or timber, or wood of any description, which shall have been taken off of, or from any canal land described in any permit aforesaid, such person shall be liable to pay at the rate of twenty dollars for every such tree or sapling, and one dollar per foot in length of every piece of timber, and twenty dollars per cord for wood, to be recovered by the person to whom the permit is given, in an action of assumpsit or debt, *Timber taken from. Liability.*

before any Justice of the Peace or Circuit Court having jurisdiction of the amount.

If provisions are violated.

Liable to action.

Certificate of forfeiture, sufficient to remove. Duty of sheriffs.

SEC. 8. If any person to whom a permit shall be given, as aforesaid, shall violate the provisions of this act, by cutting, taking, receiving, purchasing or using any tree, sapling, timber or wood, or shall in any manner whatsoever, violate or fail to comply with the provisions of the law, such person shall be liable to an action upon his or her bond, and shall also forfeit all right and claim to the possession allowed him or her by the permit, and to all the improvements upon the premises; and a certificate of the fact of such forfeiture, made by the canal commissioners, under the seal of the board, shall be sufficient to authorize any sheriff to remove any person off of, and from any canal lands; and sheriffs are hereby requested to act upon the said certificates, and call to their aid the power of the county, when necessary to remove any person as aforesaid.

Offender liable.

How recovered.

Proviso.

Bar to recovery for State.

SEC. 9. If any person, except those to whom permits may be given, shall hereafter, cut, fell, bore, box, injure or destroy any tree or sapling, of any description, standing or growing upon canal lands, he or she so offending, shall be liable to pay any sum not less than five, nor more than twenty dollars, for every such tree or sapling so cut, felled, boxed, bored, injured or destroyed, to be recovered by action of debt, in the name of the State of Illinois, before any Justice of the Peace or Circuit Court having jurisdiction of the amount, *Provided*, That when the injury or trespass shall be committed upon any land described in any permit, a recovery in behalf of the State, shall bar any subsequent recovery in behalf of the person to whom the permit was given; and a recovery in behalf of such person, with satisfaction of the amount, by actual payment of the money recovered, shall be a bar to any subsequent recovery in behalf of the State; and the provisions of this section shall apply to third persons, who employ persons, who commit any injury or trespass herein prohibited.

Action of assumpsit.

Proviso.

Bar to recovery.

SEC. 10. If any person shall hereafter purchase, receive, or use any tree, timber or wood of any description, or any sapling which may have been taken or removed from any canal lands, he or she shall be liable to pay for every tree or sapling so purchased, received, or used, the sum of twenty dollars; and for every foot in length of any piece of timber so purchased, received or used, the sum of one dollar, and for wood, at the rate of twenty dollars per cord, to be recovered by action of assumpsit or debt, in the name of the State, in any court, or before any Justice of the Peace, having jurisdiction of the amount claimed, *Provided*, That when a judgment shall have been recovered under the provisions of this section, in favor of the State, such recovery shall operate as a bar to a future recovery, in the name of any person to whom a permit may have been given, and *Provided, also*, That a recovery, and actual payment of the money recovered, in behalf of any person authorized to sue for the same, shall be a bar to any subsequent recovery in behalf of the State.

Jurisdiction of circuit court.

SEC. 11. The circuit courts of every county in the State are hereby vested with jurisdiction, to hear and determine all causes and actions instituted in behalf of the State, under the provisions

of this act; and the clerks of said courts are hereby required to issue process and subpoenas for witnesses, directed to any county in the State, and such process shall be executed and obeyed, as other process. *Duty of clerks of*

SEC. 12. If any sheriff, or other officer, shall fail to execute and return any process, issued under the provisions of this act, he shall be liable to be proceeded against by attachment, and no rule to show cause shall be necessary to authorize the issuing of any such attachment, but the same shall be issued on the application of the agent or attorney of the State, and be returnable as early as practicable; and unless the sheriff, or other officer, can show a legal excuse for the failure to execute or return the process, he shall be liable to be fined in any sum not exceeding five hundred dollars, and to pay all costs of the proceeding against him; he shall moreover be liable to an action upon his bond for damages, as for other violation or neglect of duty. *Sheriff, &c. to be liable.*

SEC. 13. The canal lands shall be considered as including all lands which have been, or may hereafter be granted to the State of Illinois, by the United States, to aid the State in the construction of a canal to unite the waters of the Illinois river with those of Lake Michigan; and the certificate of any canal commissioner, that any lot or parcel of land is included or embraced in any such grant, shall be evidence of the existence of the grant, and of the right of the State to the land. *Canal lands, what they include. Illinois river and Lake Michigan. Proof of grant.*

SEC. 14. It shall be the duty of the agents of the State, appointed as aforesaid, to cause the provisions of this act to be enforced, and to institute and prosecute all suits and actions necessary and proper to enforce the same; and it shall also be the duty of every canal commissioner, engineer, and all other persons employed by the State to give information to the said agents of all and every violation of the provisions of this act. *Duty of commissioners, &c.*

SEC. 15. The Governor shall cause this act to be published in all the newspapers printed in Chicago, Ottawa, Peoria, and Galena; and shall issue a proclamation to be published in the papers aforesaid, declaring the time when the same shall take effect. *Governor to cause to be published in newspapers, proclamation. Time when to take effect.*

SEC. 16. Persons who obtain permits from the agents of the State, under the provisions of this act, and who execute bonds as herein required, shall be, and are hereby released from all penalties incurred by them for violating the provisions of the law, in relation to trespassing upon canal lands. *Release from penalties.*

SEC. 17. Each agent elected as aforesaid, shall be entitled to three dollars per day for every day employed, to be paid out of the canal fund. *Confirmation of agents.*

SEC. 18. Any one or more of said agents shall be discharged by the Governor, whenever the Canal Commissioners shall inform him that their services are no longer essential to the interest of the State. *When not needed Governor may discharge.*

SEC. 19. The bonds taken by the agents, as herein required, shall be delivered over to the board of canal commissioners, and by them kept and preserved.

APPROVED 4th March, 1837.

In force 4th March, 1837. AN ACT supplemental to an act entitled "An act to protect the canal lands against trespassers."

If any agent of State refuse to act.

Governor to appoint successor, or fill vacancy.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in case of the resignation, or refusal to act of any agent of the State appointed under the provisions of an act passed during the present session of the General Assembly, "An act to protect the canal lands against trespasses," during the recess of the General Assembly, the Governor is hereby authorized and required to appoint a successor or successors to such agent or agents; and the person or persons so appointed, shall possess the powers and perform the duties required of the agents elected under the provisions of the act aforesaid.

APPROVED, 4th March, 1837.

In force 21st July, 1837. AN ACT for the relief of Purchasers of Canal Lands and Lots.

Act repealed in respect to purchasers on conditions.

Time of payment.

Failure to work for forfeiture.

What bills to be received by canal com.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That so much of the act entitled "An act for the construction of the Illinois and Michigan canal," approved on the ninth of January, one thousand eight hundred and thirty-six, as declares lands and lots sold, to be forfeited to the state in default of the purchasers, making payments as required by said act, is hereby repealed in respect to purchasers who comply with the following conditions, viz: That they will on the first day of October next, pay all the interest then due upon said debts, according to the terms of sale; and on the first day of October, 1838, and first day of October, 1839, pay the interest and ten per cent. of the principal, which may be due; and on the first day of October, in each and every year thereafter, pay the interest and twenty per cent. upon the principal in advance, until the whole sum due shall be paid. And payments made at the times and in the manner herein provided, shall be accepted by the canal commissioners, as a compliance on the part of the purchasers with the conditions of sale, as prescribed by the above recited act, but nothing herein contained shall be construed to impair or in any wise affect the lien of the state upon the property sold for the payment of the purchase money or any part thereof, or any interest due or which may become due upon the same. And it is hereby declared that a failure on the part of any purchaser to comply with the conditions herein contained, shall work a forfeiture of the lot or land purchased, together with all previous payments; and the provisions of the thirty-fifth section of the above recited act, shall be deemed and considered applicable to such lot or land, and purchaser, and shall be enforced by the canal commissioners.

SEC. 2. The canal commissioners are authorized and required to receive in payment for canal lots and lands sold, the bills and notes of the State Bank of Illinois, and Bank of Illinois, and bills

and notes of any other banks which the bank in which the canal funds are or may be deposited, will receive and credit as cash to the canal fund. *missioners in payment of debts.*

SEC. 3. The contractors upon the canal, with whom contracts were made previous to the year one thousand eight hundred and thirty-seven, shall be entitled to monthly payments, upon the terms and in the manner provided for making payments upon contracts made subsequent to the first day of January, one thousand eight hundred and thirty-seven. *What contractors entitled to monthly payments.*

SEC. 4. That all relief extended to purchasers of canal property under the provisions of this act, is to be claimed under the express understanding and condition, that the legislature reserves the right to amend, modify, or repeal this act at any time after the first Monday in December, eighteen hundred and thirty-eight; and said right to amend, modify, or repeal the same, after the time aforesaid, is hereby reserved. *Right of legislature.*

APPROVED, 21st July, 1837.

AN ACT to provide for the Sale of certain Canal Lands, and for other purposes. *In force July 21st, 1837.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That if the commissioners of the Illinois and Michigan Canal, shall be of opinion that a sale of parts of the canal lands, during the next year, will advance the interests of the state, by affording facilities to contractors in procuring supplies and places for boarding for hands employed upon the canal, or otherwise, they are authorized to select lots or tracts of land at convenient points along the line, and sell the same for the purpose aforesaid, and subdivide the said lots or tracts into lots of not less than forty nor more than eighty acres, the division to be made to correspond with similar divisions of lands sold by the United States; and the selection to be made, so that no lot shall lie within less than one half mile of the line of the canal, and the quantity not to exceed in value four hundred thousand dollars; and the lands so selected shall be valued, advertised, and sold in the manner required for selling lots in Chicago and Ottawa, but the valuation shall not be made until within twenty days of the sale, and shall be made as well with reference to the terms of sale as all other considerations affecting the market value thereof. The place of sale shall be fixed by the commissioners. The terms of sale shall be, one-tenth of the purchase money to be paid at the time of sale, and the balance payable in ten equal annual instalments, bearing an interest of six per cent. per annum from the date of sale, payable annually in advance, subject to the same conditions and provisions prescribed in reference to the sale of lots in Chicago and Ottawa. *Power given to canal commissioners to sell lands.*

SEC. 2. No two quarter sections of land shall be sold under the provisions of this act, which shall adjoin each other. *No two sections to be sold together.*

Terms of sale. SEC. 3. The terms of the sales authorized to be made by the act which was approved on the second day of March, in the year one thousand eight hundred and thirty-seven, shall be the same as those prescribed in this act; and the sales under that act shall be limited to the actual wants of the canal funds.

SEC. 4. In negotiating loans which have been or may be authorized for the construction of the canal, the governor, shall, if practicable, contract to receive the money borrowed, in sums of one hundred thousand dollars, or less, at such times as the same may be wanting for use upon the canal.

Navigable feeder. SEC. 5. In the construction of the navigable feeder and lateral canal at Ottawa, the canal commissioners may so alter the plan heretofore prescribed, as to connect the said feeder or lateral canal with Fox river, instead of the Illinois river, or make any other change which in their judgment may be best calculated to enhance the value of state property, and the usefulness of the canal.

Resurvey to be made. SEC. 6. The canal commissioners are authorized to make a resurvey of those parts or additions to the town of Ottawa, wherein lots are authorized to be sold, and change the lines of the lots and streets, so as to make those lines correspond with the lines of that part of the town wherein the lots have heretofore been sold; or they may make the said lines in such manner as they may deem best for the interest of the State.

Bason may be enlarged. SEC. 7. The canal commissioners are authorized to enlarge the natural bason at the confluence of the north and south branches of the Chicago river, so as to render the same as useful and convenient as possible; and block number seven, of the canal lots in the city of Chicago, shall be reserved from sale for the purpose of exchanging the same for block number fourteen, which will be required to be removed in the enlargement of the said bason; and the said commissioners are hereby required to cause the aforesaid block number fourteen to be appropriated for the purpose aforesaid, and to proceed to obtain the title to the same, in the manner provided by law for obtaining lands or materials for the use of the canal.

Block number fourteen to be appropriated. SEC. 8. When the board of appraisement shall appraise the said block fourteen, they shall also appraise the aforesaid block seven, and if the owners of block fourteen will take in exchange for the same, block number seven, at the appraisement thereof, the canal commissioners are authorized to make the exchange, taking from the said owner a sufficient conveyance for said block to the state, and giving to such owner a certificate of purchase for block seven, stating therein the facts of the transaction; and if block seven shall be appraised to more than block fourteen, the said owner, shall be required to pay the difference in a reasonable time, to be fixed by the canal commissioners; and upon such payment being made, the said owner shall be entitled to a patent for the same; but if said block shall be valued to less than block fourteen, or the same sum, he shall be entitled to a patent, upon executing the conveyance aforesaid. If the difference in value shall be in favor of the said owner, the canal commissioners shall pay the same out of the canal fund; but if no such agreement is made, as herein contemplated, the aforesaid block fourteen shall, nevertheless, be obtained and

Block 14, when appraised.

appropriated, as herein provided, and block number seven shall be subject to sale as other lots in Chicago now are.

SEC. 9. The treasurer of the board of canal commissioners shall not hereafter be required to perform any other duties than those pertaining to the office of treasurer alone, nor shall he hereafter be considered as one of the board of canal commissioners. The said board shall hereafter be composed of the president and acting commissioner, who shall perform all the duties required of the canal commissioners, except such as relate to the duties of treasurer; nevertheless, it is hereby declared and enacted, that whenever the board as organized by this section, shall disagree in opinion upon any question, matter or thing, in relation to the canal, the powers or duties of the board, or of any agent or any other matter whatever, touching their duties as canal commissioners, the treasurer is hereby constituted and appointed the umpire to give the casting vote upon every such difference, and in giving such vote, he shall be considered as bound for the consequences thereof, as a canal commissioner; and the board of commissioners shall act upon all decisions made by the umpire as aforesaid, as though the three making the decision were all canal commissioners.

SEC. 10. In the event that the funds provided by existing laws, shall prove insufficient to meet the expenditures upon the canal for the years 1837 and 1838, the Governor is authorized to negotiate a loan upon the faith and credit of the state, not exceeding in amount three hundred thousand dollars, to meet any deficit which may occur; said loan shall be negotiated in the manner and upon the terms, and the state assumes the responsibilities, as provided for in relation to the loan authorized by the "act entitled an act for the construction of the Illinois and Michigan canal," approved on the 9th of January, 1836; *Provided*, That said loan shall not be made until the whole of the means available under existing laws, shall have been exhausted.

APPROVED, 21st July, 1837.

CENSUS.

AN ACT to provide for the taking of the census, or enumeration of the Inhabitants of the State. *In force Jany. 13, 1829.*

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the County Commissioners Court of each county in this state, shall at their June term, in the year of our Lord one thousand eight hundred and thirty, and at their June term, in every fifth year thereafter, appoint some competent person as commissioner, to take an enumeration of the inhabitants of such county, and also of such unorganized county or counties, or district of country, as may be attached thereto, omitting in such enumeration, Indians not taxed, and distinguishing free white persons, from free persons of color, and the French Negroes*

Persons to be appointed to take census.

What persons shall be enumerated.

Governor authorized to negotiate loan.

Duty of treasurer.

and Mulattoes held in bondage, from such as are indentured or registered, or born of indentured or registered parents; and also distinguishing the sexes, in each of such classes, in separate and distinct columns; and also, by dividing the free white population, and setting it down in separate and distinct columns, according to the form herein prescribed, such as are of ten years of age and under; over ten, and not exceeding twenty years; over twenty, and not exceeding thirty years; over thirty, and not exceeding forty years; over forty, and not exceeding fifty years; over fifty, and not exceeding sixty years; over sixty, and not exceeding seventy years; over seventy, and not exceeding eighty years; over eighty, and not exceeding ninety years, and all such as are exceeding ninety years; and also distinguishing, in a separate column, such free male white persons between the ages of eighteen and forty-five years, as shall be subject to militia duty, either as officers or militia men. And it shall be the further duty of the commissioners, to be appointed as aforesaid, to ascertain, and set down with the enumeration as aforesaid, the number and description of all manufactories, mills, machines and distilleries, within their respective counties, and the counties and districts of country thereto attached, as aforesaid, specifying the different kinds thereof. And the said enumeration shall be made by an actual inquiry at each dwelling house, or from the head of each family, when the same can be conveniently done, or otherwise from the best information that can be obtained, where there shall be no fixed place of residence, or the head of such family, or other person to be included in such enumeration, shall be absent from the county or state.

And how they shall be distinguished.

Manufactories, and mills, &c.

Enumeration to be made by actual inquiry.

When to commence.

Oath of commissioner.

SEC. 2. The enumeration shall commence on the first Monday in September, in the year of our Lord one thousand eight hundred and thirty, and on the first Monday in September, every fifth year thereafter, and shall close within three calendar months thereafter. And each person or commissioner so appointed, before he enters upon the duties required to be performed by this act, shall take an oath (or affirmation) before some judge or justice of the peace of the county, as follows: "I, A. B., do solemnly swear (or affirm) that I will make a just and perfect enumeration and description of all persons resident within the county of _____ and state of Illinois, (and the county or counties, or district of country thereto attached, if any) and perform all other duties required of me, by the act entitled 'an act to provide for the taking of the census or enumeration of the inhabitants of the state of Illinois,' according to the best of my knowledge and abilities: so help me God."

Returns, when to be made.

SEC. 3. The several commissioners appointed under this act, from time to time, shall, on or before the first Monday in December next, after such enumeration shall be taken, transmit to the clerk of the circuit court of the proper county, and to the office of the secretary of state, accurate returns of all such inhabitants as aforesaid, and of all such manufactories, mills, machines, and distilleries, as aforesaid, and shall also make out and transmit to the adjutant general of this state, a certified statement of the number of all persons subject to militia duty as aforesaid; which returns, with the exception of that to be made to the adjutant general, shall be made and certified according to the following form, to wit: "I,

Form thereof.

A. B., commissioner for taking the census, or enumeration of the inhabitants of the county of _____ (and the attached parts thereof, if any,) do hereby certify, that the schedule hereto annexed, contains an accurate statement of the whole number of persons resident in the said county of _____ (and the attached parts thereof, if any,) together with the number and kinds of manufactories, mills, machines, and distilleries (if any) therein, so far as I have been able to ascertain the same. Witness my hand, this _____ day of _____ A. D. 18—
A. B., Commissioner."

Census, or enumeration of the inhabitants of the county of _____ (and the attached parts thereof, if any,) for the year of our Lord one thousand eight hundred and _____		
Of ten years, and under,	1st class.	} Free white male persons.
Over ten, and not exceeding twenty years,	2d class.	
Over twenty, and not exceeding thirty years,	3d class.	
Over thirty, and not exceeding forty years,	4th class.	
Over forty, and not exceeding fifty years,	5th class.	
Over fifty, and not exceeding sixty years,	6th class.	
Over sixty, and not exceeding seventy years,	7th class.	
Over seventy, and not exceeding eighty years,	8th class.	
Over eighty, and not exceeding ninety years,	9th class.	
Over ninety years.	10th class.	
Over ten years and under,	11th class.	} Free white female persons.
Over ten, and not exceeding twenty years,	12th class.	
Over twenty, and not exceeding thirty years,	13th class.	
Over thirty, and not exceeding forty years,	14th class.	
Over forty, and not exceeding fifty years,	15th class.	
Over fifty, and not exceeding sixty years,	16th class.	
Over sixty, and not exceeding seventy years,	17th class.	
Over seventy, and not exceeding eighty years,	18th class.	
Over eighty, and not exceeding ninety years,	19th class.	
Over ninety years,	20th class.	
Free male persons of color, of all ages,	21st class.	} Negroes & mulattoes.
Free female persons of color, of all ages,	22d class.	
Indentured or registered servants, and their children,	23d class.	
French negroes and mulattoes held in bondage,	24th class.	
Grand Total,		Total.
Persons over 13, and under 45 years of age, subject to militia duty,		Militia.
Manufactories, Mills, Machines, and Distillers.		{ Manu- factories, &c.

SEC. 4. It shall be the duty of each commissioner, when taking any enumeration as aforesaid, to set down the number of all persons, under each appropriate head, or description according to the foregoing classification, including, also, each person subject to militia duty, as aforesaid, under classes numbered two, three, four and five, according to their several ages, and likewise in one separate column, as aforesaid, and to sum up at the foot of each column, the whole number of persons therein set down, and afterwards the whole number included in the classes numbered from one to twenty-four, and extend the aggregate at the foot of a separate column, as the grand total thereof.

Militiamen, how to be classed.

Aggregate.

SEC. 5. Each commissioner failing or neglecting to make proper returns, as aforesaid, or making a false return of the enumeration,

Negligence of commissioner.

tion to the clerk of the circuit court of the county, to the secretary of state, and adjutant general, within the time limited by this act, shall forfeit the sum of three hundred dollars, recoverable in the circuit court of the county, where such offence shall have been committed, by action of debt, information, or indictment, the one half thereof to the use of the informer, and the other half to the county. And for the more effectual discovery of said offences, the judges of the several circuit courts, in this state, at their next term to be held after the expiration of the time allowed for making the returns of the enumeration hereby directed, shall give this act in charge to the grand juries of their respective counties, and shall cause the returns of the commissioner to be laid before them, for their inspection.

How punished.

This act to be given in charge to the grand jury.

SEC. 9. Each person, whose usual place of abode shall be in any family, on the said first Monday in September, in the year of our Lord one thousand eight hundred and thirty, and on the first Monday in September every fifth year thereafter, shall be returned with the members of such family; and the name of every person who shall be an inhabitant of any county, or the attached part thereof, without any fixed place of residence, shall be inserted in the county in which he, or she, shall be on the said first Monday in September; and every resident person who shall be absent from the county, or state, at the time of taking any such enumeration, shall be set down as belonging to the place where he, or she, usually resides in this state.

Further directions to the commissioner.

Person bound to disclose facts to commissioner.

Penalty for not doing so.

Recovery thereof.

Compensation to commissioner.

SEC. 7. Each free person, over the age of sixteen years, whether heads of families or not, belonging to any family, within any county, made or established in this state, shall be and hereby is obliged to render to the commissioner appointed in said county, if required, a true account, to the best of his or her knowledge, of every person belonging to such family, respectively, according to the several descriptions aforesaid, on pain of forfeiting twenty dollars, to be sued for and recovered, by action of debt, by such commissioner, for the use of the proper county: *Provided*, that in all cases where any such fine shall be assessed against any minor, or minors, the same shall be paid by his, her, or their parent or guardian; and in case of his or her refusal to pay the same, an attachment may be issued to enforce the payment thereof.

SEC. 8. Each of said commissioners shall receive at the rate of two dollars for every hundred persons returned, for the first two thousand; at the rate of one dollar and seventy-five cents for each hundred persons returned, over two, and not exceeding three thousand; at the rate of one dollar and fifty cents for the fourth thousand; at the rate of one dollar and twenty-five cents for the fifth thousand, and at the rate of one dollar for each hundred, over and above five thousand; to be paid out of the state treasury, out of any moneys not otherwise appropriated.

SEC. 9. The secretary of state shall receive and file such returns in his office, and return the same to the speaker of the house of representatives, on or before the second day of the next session, after such enumeration is made; and the adjutant general shall file the returns to be made to him of the number of persons subject to militia duty, as aforesaid, in his office; and shall immediately

Duty of the secretary of state and adjutant general.

thereafter make out a statement of the whole number of such persons, and report the same to the secretary of the war department of the United States. This act to take effect from and after its passage.

APPROVED, Jan. 13, 1829.

CHANCERY.

AN ACT prescribing the mode of proceeding in Chancery.

In force June 1, 1833.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the several circuit courts in this state, in all causes of which they may have jurisdiction as courts of chancery, shall have power to proceed therein according to the mode hereinafter prescribed, and where no provision is made by this act, in cases that may arise, then according to the general usage and practice of courts of equity, or agreeably to such rules as may be established by the said courts in that behalf.

SEC. 2. The mode of commencing suits in equity, shall be by filing a bill, setting forth the nature of the complaint, with the clerk of the circuit court of the county, within whose jurisdiction the defendants, or the major part of them, if inhabitants of this state, reside, or if the suit may affect real estate in the county, where the same or greater part thereof shall be situated: If the defendants are all non-residents, then with the clerk of the circuit court of any county: Bills for injunctions to stay proceedings at law, shall be filed in the office of the circuit court of the county in which the record of the proceedings had, shall be.

Mode of commencing suits in equity.

SEC. 3. Upon the filing of every bill as aforesaid, the clerk of the court aforesaid, shall thereupon issue a summons directed to the sheriff of the county, in which the defendant resides, if the defendant be a resident of this state, requiring him to appear, and answer the bill on the return day of the summons; and where there are several defendants residing in different counties, a separate summons shall be issued to each county, including all the defendants residing therein. The said summons shall be tested in the name of the judge of the circuit court, out of which it may issue, shall bear date on the day it issues, and be made returnable to the next term of the court, after the date thereof, unless the suit be brought within ten days immediately preceding any term, in which case the summons shall be returnable to the next term thereafter.

SEC. 4. Every summons shall be under the signature of the clerk of the court, issuing the same, and the service of the summons, shall be by delivering a copy thereof to the defendant, or leaving such copy at his usual place of abode, with some white person of the family, of the age of ten years or upwards, and informing such person of the contents thereof, which service shall be at least ten days before the return day of such summons.

Summons.

When the defendant is a non-resident, cannot be found, or conceals himself.

SEC. 5. In all cases, where the complainant at the time of issuing the summons or afterwards, shall file in the clerk's office the affidavit of himself, or some credible person, showing satisfactorily that the defendant resides, or hath gone out of this state, or on due inquiry cannot be found, or doth conceal himself therein, it shall be lawful for the clerk to cause notice of the pendency of such suit, the time and place to which the summons is returnable, before what court, in whose favor, and against whom the suit is pending, to be published in one of the newspapers printed in this state, for four weeks successively, once at least in every week. But this proceeding shall not dispense with the usual exertion, on the part of the sheriff, to serve the summons. In case sixty days shall not intervene between the filing of the aforesaid affidavit, and the next term of the court thereafter, and the defendant shall not be served with process, the cause shall be continued until the next term. And in case sixty days shall intervene as aforesaid, and the defendant shall fail to appear on the return day of the writ, then upon satisfactory proof to the court, that publication of notice was made as aforesaid, the court may order the bill to be taken for confessed. And in case of service of process, the like proceedings may be had without proof of publication as aforesaid. And if the cause shall be continued for the aforesaid cause, then the court at the next term, to which the cause is continued, on proof of publication of notice or service of process, may order the bill to be taken for confessed, if the defendant shall not enter his appearance on the first day of such second term; and in all cases where the bill shall be taken for confessed, the court may make such decree thereon, as shall be just, and may issue process to compel its performance, either by sequestration of the real and personal estate, and effects of the defendant so absent, or concealed, or not found as aforesaid, or such parts thereof as shall be deemed sufficient to satisfy the claim or demand of said complainant, or by causing possession of the estate or effects demanded by the bill to be delivered to the complainant, or may order the complainant's claim or demand to be paid out of the estate, and effects so sequestered according to the true intent and meaning of the decree of the said court, such complainant giving such security, and in such amount as the court may direct; to abide such order as may be made, touching the restitution of such estate and effects, in case the defendant shall afterwards appear, and be admitted to defend the suit, upon payment of the costs and such other terms as the court may direct. If no such security shall be given, the estate and effects so sequestered, shall remain under the direction of the court, to abide such order as shall be just in the premises. If any person residing out of this state as aforesaid, against whom a decree is, or shall be made, his heirs, devisees, executor, administrator, or assigns, as the case may require, shall, within one year after notice in writing given him or them of such decree, or within three years after such decree, if no such notice shall have been given as aforesaid, appear in open court and petition to be heard, touching the matter of such decree, and shall pay such costs as the court shall deem reasonable in that behalf the person so petitioning; may appear and answer the complainant's bill, and thereupon, such

proceedings shall be had as if the defendants had appeared in due season, and no decree had been made. The decree shall, after three years from the making thereof, if not set aside in manner aforesaid, be deemed and adjudged confirmed against such non-resident defendant, and all persons claiming under him by virtue of any act done subsequent to the commencement of such suit; and at the end of the said three years, the court may make such further order in the premises as shall be required, and shall be just.

SEC. 6. If the defendant shall be brought into court by virtue of any process, being in contempt for refusing to appear, and shall continue to refuse or neglect to enter his appearance, or to appoint a solicitor of the court to do it for him, according to the provisions of this act, or the rules of said court, then, and in that case, the court may appoint a solicitor to enter an appearance of such defendant, and such further proceedings may be had in the said cause, as if the party had actually appeared.

Defendant, when in contempt for refusing to appear.

SEC. 7. The judges of the said circuit courts may, from time to time in their several circuits, establish rules for proceedings in taking a bill for confessed, in every case not otherwise provided for by law; and also for the proceedings necessary to entitle either party to a decree or order against the opposite party by default, and in such cases as may occur, where, according to the justice and necessity of the case, the same may be required: Nothing herein contained shall affect proceedings for divorce in case of adultery, but such proceedings shall be prosecuted according to the statutes regulating the same, so far as provision shall have been made.

In what cases judges may establish rules of proceeding.

SEC. 8. Every defendant who shall be summoned according to the provisions of this act, shall file his exceptions, plea, demurrer, or answer to the bill at the time to which the process of summons shall be returnable; if he fail to do so, the bill may be taken for confessed; but for good cause shewn, the court may extend the time for excepting or pleading, and the court may thereupon enter an interlocutory decree, which may be made absolute at the next term, and carried into effect as other final decrees. If the defendant shall appear at the next term and offer to file his answer to the bill, the court may permit him to do so, upon his showing sufficient cause, and paying the costs of the preceding terms; in such case, the decree shall be vacated, and the cause may be proceeded in as in other cases.

Plea or answer when to be filed.

SEC. 9. Where a bill is taken for confessed, the court, before a final decree is made, if deemed requisite, may order the complainant to produce documents and witnesses to prove the allegations of his bill, or may examine him on oath or affirmation, touching the facts therein alleged, such decree shall be made in either case as the court shall consider equitable and proper.

When bill is taken for confessed.

SEC. 10. Every answer shall be verified by an oath or affirmation, taken before and certified by a judge or justice of the peace in this state, or the clerk of the court, in which the action is pending, or before a judge or justice of the peace, or other person authorized to administer an oath in the state, territory, kingdom, or empire, in which the defendant may be, or reside; the official character of such officer, if out of this state, being attested by the

Answer to be verified by oath.

seal of some court of record, within such state, territory, kingdom, or empire.

When adjudged insufficient.

SEC. 11. When an answer shall be adjudged insufficient, the defendant shall file a further answer within such time as the court shall direct, and on failure thereof, the bill shall be taken as confessed; if such further answer shall be likewise adjudged insufficient, the defendant shall file a supplemental answer, and pay all costs attendant thereon; if that shall be adjudged insufficient, the defendant may be proceeded against for a contempt, and the like proceedings be had thereon to enforce the order of the court, as in other cases of contempt.

SEC. 12. Every defendant shall answer all the interrogatories put to him by the complainant in his bill, unless excepted to; and after filing his answer, may exhibit interrogatories to the complainant, which shall be answered by him, specially, on oath or affirmation, unless excepted to as improper, and such exceptions allowed, and the complainant's answer shall be evidence in the cause, in the same manner as the defendant's answer.

Exceptions to answers or interrogatories when to be filed.

SEC. 13. All exceptions to answers, interrogatories exhibited by the defendant as aforesaid, shall be filed within such time as the court may direct, and be argued at such time as the court may appoint. If the complainant's exceptions be overruled, he shall pay costs to the defendant; and if the defendant's answer be adjudged insufficient, he shall pay costs to the complainant.

Replication.

SEC. 14. Replications shall be filed within four days after answer, if such answer be put in [in] term time; or if in vacation, then the plaintiff or his attorney shall have notice of the filing of the answer, and which shall be general, and all parties shall have the same advantages, as if they were special, and after replication filed, the cause shall be deemed at issue, and stand for hearing at the next term, or in default of filing such replication, the cause may be set for hearing upon bill and answer; in which case the answer shall be taken as true, and no evidence shall be received, unless it be matter of record to which the answer refers. When the complainant shall require a discovery respecting the matters charged in the bill, the disclosure shall not be deemed conclusive, but if a replication be filed, may be disproved or contradicted like any other testimony, according to the practice of courts of equity.

Courts may extend time of answering.

SEC. 15. The said circuit courts, when sitting as courts of equity, may extend the time for answering, replying, pleading, demurring, or joining in demurrer, and may permit the parties to amend their bills, petitions, pleas, answers, and replications, on such terms as the court may deem proper, so that neither party be surprised or delayed thereby.

May direct issues to be tried by jury.

SEC. 16. The said circuit courts may, in their discretion, direct an issue or issues, to be tried by a jury whenever it shall be judged necessary in any cause in equity, pending in any of the said courts. In all other causes in equity, the mode of trial shall be the same as has been heretofore practised in courts of chancery.

SEC. 17. If in any suit or action now pending, or which shall hereafter be brought in any court of chancery, there are or shall

be two or more complainants or defendants, and one or more of them die, (if the cause of such action or suit survive to the surviving complainant or complainants, or against the surviving defendant or defendants,) such suit or action shall not thereby be abated, but such death being suggested and shewn to the satisfaction of the court, such suit or action shall proceed at the suit of the surviving complainant or complainants, and against the surviving defendant or defendants.

When cause of action does not survive.

SEC. 18. Where there shall be two or more complainants or defendants, in any suit or action in chancery as aforesaid, and any of them die, and the cause of action do not survive, but other persons shall become parties in interest, in right, or by the death of such deceased party, such suit or action shall, by reason of such death, be abated only with respect to such deceased party. The surviving complainant or complainants may proceed against the surviving defendant or defendants without reviving the suit against the representatives of the deceased party, or any other who may become interested by the death of such party; but in such case, such representatives or other persons becoming interested by the death of such party, shall not be bound by any order or decree in such cause to which they are not made parties; and they may be made parties in the manner hereinafter provided.

SEC. 19. In all cases where all the complainants or defendants, in any suit now pending, or hereafter to be brought in any court of chancery, shall die before final decree, such suit or action shall not thereby be abated, but may be revived in the name of the legal representatives of the deceased, or other person becoming interested in the cause of action by the death of such party.

When representatives are desired to be made parties.

SEC. 20. Where any complainant or complainants in any suit in chancery shall wish to make the representatives of any deceased defendant, or others who may become interested by the death of such defendant parties to such suit, no bill of revivor shall be necessary, but such death being suggested, and shewn to the satisfaction of the court, or clerk in vacation, a summons in the nature of a *scire facies* may be issued against all persons residing in this state, so to be made parties; such court or clerk may make an order of publication, as to all such as are non-residents, or whose names are unknown, in the same manner as in the case of non-resident, or unknown original defendants, which summons shall be served and returned, and such order published in the same manner, and with the like effect to all intents and purposes as is required in like cases of summoning or notifying original defendants. If any person so summoned or notified shall not, within such time after service or publication as the court shall limit or appoint, appear and put in his answer, or signify his disclaimer of the suit and the matters in controversy therein, the complainant or complainants may cause his appearance to be entered, and in such case the answer of the deceased party, if any there be, shall be deemed and taken as and for the answer of such representatives or other person summoned or notified as aforesaid; if their be no answer, proceedings shall be had in all respects against such person, as if he had been originally a defendant: when such deceased party shall have been complainant, in any such suit pending as

aforesaid, the lawful representative of such deceased complainant, or any other person or persons who may have become interested in the cause of action by the death of such complainant, shall and may, upon affidavit thereof by him or them, or by any other competent person, and on motion made in court, be, by the rule and order of the court, inserted as a complainant or complainants, in the, said suits, and be permitted to make such amendments in the bill, as his, her, or their title or interest therein may require; to which amendments the defendants shall be compelled to answer as to the original bill; if such person or persons shall not, within such time as the court shall limit and appoint, cause himself, herself, or themselves to be entered as complainant or complainants in the room of such deceased complainant, then the surviving complainants, (if any,) shall proceed in such suit against the defendant or defendants: If there be no such surviving complainant, and the representatives of the deceased complainant, or other persons interested, shall not appear as aforesaid, the suit shall be abated.

When a decree shall direct the execution of a deed.

SEC. 21. Whenever a decree shall be made in any suit in equity, directing the execution of any deed or other writing, and the party against whom the same shall have been entered shall not comply therewith, within the time required, it shall be lawful for the court to appoint a commissioner to execute the same; the execution thereof by such commissioner shall be as valid in law to pass, release, or extinguish the right, title, and interest of the party on whose behalf it is executed, as if it had been executed by such party in proper person, in conformity with such decree; and such deed or other writing, if it relate to land, shall, within six months after its execution by such commissioner, be recorded in the office of the recorder of the county wherein the lands may lie; and if it be not recorded as aforesaid, it shall be void as to subsequent *bona fide* purchasers, without notice. In all cases where a sale of property is decreed, the court may direct the same to be made for cash, or on such credit, and on such terms as it may deem best and most equitable to the interests of the several parties.

Decrees shall be liens on real estate.

SEC. 22. All decrees given in causes in equity in this state, shall be a lien on real estate, and shall have the same force and effect as judgment at law. If no commissioner be appointed to carry such decree into effect, such decree may be carried into effect by execution or other final process, according to the nature of the case, directed to the sheriff or other officer of the proper county; which when issued, shall be executed and returned by the sheriff or other officer to whom it may be directed, and shall have the same operation and force, as similar writs issued upon a judgment at law. The sheriff or other officer to whom the same is directed, shall be subject to the like penalties and recoveries for misconduct or neglect in the execution or return thereof, as in cases at law; or the court may, if necessary, direct an attachment to be issued against the party disobeying such decree, and fine or imprison him, or both, in the discretion of the court, and may also direct a sequestration for disobedience of any decree.

SEC. 23. In any cause in equity it shall be lawful for the court in which the cause is pending to appoint a guardian *ad litem*, to any infant, or insane defendant in such cause, whether such infant or insane defendant shall have been served with process or not, and to compel the person so appointed to act. By such appointment such person shall not be rendered liable to pay costs of suit; and he shall moreover be allowed a reasonable sum for his charges as such guardian, to be paid by the party at whose motion he was appointed, to be taxed in the bill of costs.

Court may appoint a guardian ad litem.

SEC. 24. All acts and parts of acts coming within the intent, spirit, and meaning of this act, and the objects and proceedings to which it relates, and heretofore in force in this state, are hereby repealed. No proceedings, however, had, or rights secured under them, shall be in any way impeded or impaired, but may be prosecuted and enforced as if this act had not taken effect. This act to take effect on the first day of June next.

Acts repealed. [See additional act in relation to Conveyances, title, "Conveyances."]

APPROVED Feb. 13, 1833.

AN ACT to provide for issuing writs of Ne Exeat and Habeas Corpus, and for other purposes.

In force Feb. 11, 1835.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That it shall be the duty of each Circuit Judge, within his Judicial Circuit, in each county, to appoint a competent and qualified person to be a master in Chancery in such county, who shall take an oath to support the Constitution of this State and of the United States, and also an oath that he will faithfully perform the duties of his office, which oath may be taken and subscribed before any Justice of the Peace of the county.

Duty of circuit judges to appoint masters in chancery.

SEC. 2. That the said masters in Chancery, within their respective counties, shall have power to order the issuing of writs of Habeas Corpus, Ne Exeat and Injunction, in the absence of the Judge presiding in such county, and they shall perform such other services in aid of the Courts of Chancery as are usual by the practice of the Courts of Chancery to be performed by them. They shall, also, when a writ of Ne Exeat or Injunction is about to be ordered to be issued by them, approve of the security.

Their powers.

SEC. 3. The said masters in Chancery shall be entitled to the sum of one dollar for each application for a writ of Injunction or Ne Exeat, to be paid by the party applying in the first instance, and then taxed as other costs against the unsuccessful party.

Fees.

SEC. 4. For the services of the said masters in Chancery, concerning references and reports made by them, they shall be entitled to such reasonable compensation as shall be allowed by the Circuit Court of the county, to be taxed as other costs.

APPROVED, Feb. 11, 1835.

CLERKS.

AN ACT to authorize Clerks of the circuit and county commissioners' court to appoint deputies in certain cases.

*In force
Feb. 9,
1831.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the several clerks of the circuit and county commissioners' courts, in this state, be, and they are hereby authorized to appoint deputies, who shall severally take an oath for the faithful discharge of the duties of their office, and for whose conduct the principal clerk shall, in all cases, be responsible.

*May ap-
point de-
puties.*

SEC. 2. The principal clerk shall, in all cases, attend in person to the duties of his office, when it is practicable, or when the duties of the office are not greater than can be performed by one person.

*To attend
in person
when prac-
ticable.*

SEC. 3. Whenever any clerk, as aforesaid, shall reside at such a distance from the seat of justice of his county that he cannot give his daily attendance to the duties of his office, and shall not, within six months from the passage of this act, remove to the county seat, or within such a distance that he can and will give his daily attendance to the duties of his office, the office shall be taken and deemed vacant; and the presiding judge of the circuit court, and the county commissioners' court, at their first session, after being informed of the fact, shall proceed to fill such vacancy. This act to take effect from and after its passage.

*Clerk to re-
side at or
near seat of
justice,*

*Or forfeit
his office.*

APPROVED, Feb. 9, 1831.

AN ACT to compensate Clerks and other persons for services rendered in comparing poll books.

*In force
Feb. 25,
1833.*

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That in all elections of members to the general assembly, which may take place hereafter, when different counties vote in conjunction, it shall be the duty of the county commissioners' courts of the counties so voting, to appoint their clerk, or some other suitable person, whose duty it shall be to carry the vote of each county, to the place appointed for comparing the polls, and it shall be the duty of the county commissioners' court of the county where the polls are so compared, to compute the number of miles each clerk or other person shall travel in going and returning from the county where he is so appointed, to the place of comparing the polls; and it shall be the duty of the county commissioners' court, where the polls are so compared, to make an allowance to said clerks or other persons, who may take the vote of each county, as aforesaid, a compensation, not exceeding six cents per mile, going to and returning from

*In elections
for mem-
bers of gen-
assembly
where sev-
eral counties
vote
together.*

*Clerks al-
lowed
mileage.*

said place of comparing, to be paid equally out of the county treasuries of the respective counties in which said clerk or other person may be appointed; and it shall be the further duty of the county commissioners' courts when the polls are so compared, to make an estimate of all the expense so incurred by the counties respectively voting together, and divide the same among said counties so voting respectively, and shall give to each clerk or other person a certified statement of the same, under the seal of said court; and it shall be the duty of the county commissioners' court of the county where said clerk or other person shall be appointed, on the production of said certified statement, to pay to said clerk or other person the amount which appears to be due him out of the county treasury.

SEC. 2. In all cases where services have been rendered by clerks or other persons, at the last general elections, and for which compensation has not already been allowed, it shall be the duty of the respective courts to make the allowance herein provided for by the first section of this act.

*Where ser-
vice has
been ren-
dered and
not allowed.*

APPROVED, Feb. 25, 1833

AN ACT requiring Clerks of courts to renew their official bonds periodically.

*In force
Feb. 26,
1833.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That at the September term of the county commissioners' courts, in the year eighteen hundred and thirty-three, the clerks of the several county commissioners' courts of this state, shall renew their official bonds, with security, to be approved by the courts of which they are clerks, in the penalty and conditioned, as required by law; which bond, when approved, shall be spread upon the records; and such clerks shall be required every four years thereafter, to give a new bond, to be approved and spread upon the record in like manner.

*Clerks of
the county
commis-
sioners'
courts re-
quired to
renew their
bonds.*

SEC. 2. The clerks of the circuit and supreme courts of this state are hereby required, on or before the fall or winter term, in the year eighteen hundred and thirty-three to renew their official bonds, with security, to be approved of by the courts of which they are clerks, in the penalty and conditioned, as required by law; which bond shall be spread upon the records of the courts of which they are clerks respectively; and every four years thereafter, such clerks shall renew their official bonds, with security, penalty and condition as aforesaid; and to be spread upon the records in like manner.

*Clerks of
the su-
preme and
circuit
courts shall
renew their
bonds.*

SEC. 3. When any such bonds shall be given, it shall be the duty of the clerk immediately to transmit the same to the office of secretary of state, who shall file and preserve the same in his office; and if any clerk shall fail to give, or renew his official bond, as required by this act, it shall be the duty of the court of which he is clerk, thereupon, to remove him from office.

*Said bonds
to be filed
in the office
of the sec-
retary of
state.*

APPROVED, Feb. 26, 1833.

CONVEYANCES. *

*AN ACT concerning conveyances of Real Property.**In force July 1, 1827.**Livery of seizin unnecessary.*

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That livery of seizin shall in no case be necessary for the conveyance of real property; but every deed, mortgage, or other conveyance in writing, signed and sealed by the party making the same, the maker or makers being of full age, sound mind, discreet, at large, and not in duress shall be sufficient, without livery of seizin, for the giving, granting, selling, mortgaging, leasing or otherwise conveying or transferring any lands, tenements, or hereditaments in this state; so as to all intents and purposes, absolutely and fully to vest in every donee, grantee, bargainee, mortgagee, lessee, or purchaser, all such estate or estates as shall be specified in any such deed, mortgage, lease, or other conveyance: Nothing herein contained shall be so construed as to divest or defeat the older or better estate or right of any person or persons, not party to any such deed, mortgage, lease, or other conveyance.

Effects of conveyances.

SEC. 2. Every estate, feoffment, gift, grant, deed, mortgage, lease, release, or confirmation of lands, tenements, rents, services, or hereditaments made or had, or hereafter to be made or had, by any person or persons being of full age, sound mind, discreet, at large, and not in duress to any person or persons; and all recoveries, judgments, and executions had or made, or to be had or made, shall be good and effectual to him, her, or them to whom it is, or shall be so made, had, or given, and to all others; to his, her, or their use, against the judgment debtor, seller, feoffor, donor, grantor, mortgagor, lessor, releasor, or confirmor, and against his, her, or their heirs, or heirs claiming the same, only as heir or heirs, and every of them; and against all others having or claiming any title or interest in the same, only to the use of the same judgment debtor, seller, feoffor, donor, grantor, mortgagor, lessor, releasor, or confirmor, or his, her, or their said heirs, at the time of the judgment, execution, bargain, sale, mortgage, covenant, lease, release, gift, or grant made.

Operation of conveyance to use, &c.

SEC. 3. Where any person or persons stand or be seized, or at any time hereafter shall stand or be seized of, and in any messuages, lands, tenements, rents, services, reversions, remainders, or other hereditaments, to the use, confidence, or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, fine, recovery, covenant, contract, agreement, will, or otherwise, by any manner of means whatsoever; in every such case, all and every such person or persons, and bodies politic, that have, or hereafter shall have any such use, confidence, or trust in fee simple, for term of life or for years, or otherwise, or any use, confidence or trust in remainder or reversion, shall from thenceforth stand and be seized, deemed and adjudged, in lawful seizin, estate and possession of, and in the same messuages,

* See "Recorder," Sec. 2.

lands, tenements, rents, services, reversions, remainders, and hereditaments, with their appurtenances, to all intents, constructions, and purposes in law, of, and in such like estates, as they had or shall have in use, confidence or trust, of, or in the same; and that the estate, right, title, and possession, that was or shall be in such person or persons that were, or hereafter shall be seized of any lands, tenements, or hereditaments, to the use, confidence, or trust of any such person or persons, or of any body politic, be from henceforth clearly deemed and adjudged to be in him, her, or them, that have, or hereafter shall have such use, confidence, or trust, after such quality, manner, form, and condition, as they had before in, or to the use, confidence, or trust that was or shall be in them.

SEC. 4. Any person claiming right or title to lands, tenements, or hereditaments, although he, she, or they may be out of possession, and notwithstanding there may be an adverse possession thereof, may sell, convey, and transfer his or her interest in and to the same, in as full and complete a manner as if he or she were in the actual possession of the lands and premises intended to be conveyed; and the grantee or grantees shall have the same right of action for the recovery thereof; and shall in all respects derive the same benefit and advantage therefrom, as if the grantor or grantors had been in the actual possession at the time of executing the conveyance.

Conveyances valid, notwithstanding adverse possession.

SEC. 5. No estate in joint tenancy, in any lands, tenements or hereditaments, shall be held or claimed under any grant, devise, or conveyance, whatsoever, heretofore or hereafter made, other than to executors and trustees, unless the premises therein mentioned, shall expressly be thereby declared to pass, not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees, (unless otherwise expressly declared as aforesaid,) shall be deemed to be in tenancy in common.

Who may be joint tenants and how created

SEC. 6. In cases where by the common law any person or persons might hereafter become seized in fee tail of any lands, tenements, or hereditaments, by virtue of any devise, gift, grant, or other conveyance, hereafter to be made, or by any other means whatsoever, such person or persons, instead of being or becoming seized thereof in fee tail, shall be deemed and adjudged to be, and become seized thereof, for his or her natural life only, and the remainder shall pass in fee simple absolute, to the person or persons to whom the estate tail would, on the death of the first grantee, devisee, or donee in tail, first pass, according to the course of the common law, by virtue of such devise, gift, grant, or conveyance.

Entails not allowed.

SEC. 7. If any person shall sell and convey to another, by deed or conveyance, purporting to convey an estate in fee simple absolute, in any tract of land or real estate, lying and being in this state, not then being possessed of the legal estate or interest therein at the time of the sale and conveyance, but after such sale and conveyance, the vendor shall become possessed of, and confirmed in the legal estate, to the land or real estate so sold and conveyed, it shall be taken and held to be in trust, and for the use of the grantee or vendee; and the conveyance aforesaid shall be held and taken,

Title perfected after conveyance inures to grantee.

and shall be as valid as if the grantor or vendor had the legal estate or interest, at the time of said sale or conveyance.

Deeds of defeasance to be recorded in thirty days.

SEC. 8. Every deed conveying real estate, which by any other instrument in writing, shall appear to have been intended only as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; but the person or persons for whose benefit any such defeasance, or other writing, intended to operate as a defeasance is made, shall not have the benefit thereof, unless the defeasance or other writing intended to operate as such, shall be recorded in the office in which the absolute deed is required to be recorded, within thirty days after such absolute deed is recorded.

All deeds or other writings concerning land, to be acknowledged or proved before recorded.

SEC. 9. Every deed, grant, bargain, conveyance, mortgage, defeasance, bond, covenant, and other writing of, and concerning any lands, tenements, hereditaments, or real estate, within this state, whereby the same may be affected in law or equity, (may, in order to entitle any of the before enumerated writings to be recorded,) be acknowledged by the party or parties executing the same in proper person, or by his, her, or their lawful attorney, authorized by power in writing for that purpose specially, or proved by one or more of the subscribing witnesses thereto, before one of the judges of the supreme or circuit court of this state, or before one of the clerks of the circuit court, and certified by such clerk, under the seal of the said court, or before one of the justices of the peace of the county where the land intended to be affected or conveyed shall lie; but where the party or parties executing such writing live or be out of this state, the same may be acknowledged before one of the judges of the supreme or district court of the United States or of the superior courts in any of the United States or territories, or before any clerk of any court of record, in any of the United States or their territories, and certified by such clerk under the seal of the court.

How non-residents may convey land in this state.

SEC. 10. All acknowledgments and proofs of any deeds, conveyances or writings made as aforesaid, by persons, being or residing out of the United States at the time of the execution thereof, for the conveyance of any lands in this state, taken or made before the mayor or chief officer of any city in the kingdom or government, where the party or parties executing the same may reside or be, and duly certified under the seal of office of the said mayor or principal officer, shall be of like force and validity; and entitle the same to be recorded, as if the same were acknowledged in the manner prescribed in the preceding section of this act.

And how authenticated.

Duty of the judge or other officer, taking the acknowledgment or proof of deeds.

SEC. 11. No judge or other officer shall take the acknowledgment of any person to any deed or instrument of writing as aforesaid, unless the person offering to make such acknowledgment shall be personally known to him to be the real person who, and in whose name such acknowledgment is proposed to be made, or shall be proved to be such, by a credible witness, and the judge or officer taking such acknowledgment shall, in his certificate thereof, state, that such person was personally known to him to be the person whose name is subscribed to such deed or writing, as having executed the same, or that he was proved to be such by a credible witness, (naming him,) and on taking proof of any deed or instru-

ment of writing by the testimony of any subscribing witnesses, the judge or officer shall ascertain, that the person who offers to prove the same, is a subscribing witness, either from his own knowledge, or from the testimony of a credible witness; and if it shall appear from the testimony of such subscribing witness that the person whose name appears subscribed to such deed or writing, is the real person who executed the same, and that the witness subscribed his name as such, in his presence and at his request, the judge or officer shall grant a certificate, stating that the person testifying as subscribing witness was personally known to him to be the person whose name appears subscribed to such deed as a witness of the execution thereof, or that he was proved to be such by a credible witness, (naming him) and stating the proof made by him; and where any grantor or person executing such deed or writing and the subscribing witnesses are deceased, or cannot be had, the judge or officer, as aforesaid, may take proof of the hand writing of such deceased party and subscribing witness or witnesses (if any) and the examination of a competent and credible witness, who shall state on oath or affirmation, that he personally knew the person, whose hand writing he is called to prove, and well knew his signature, (stating his means of knowledge,) and that he believes the name of such person subscribed to such deed or writing, as party or witness, (as the case may be,) was thereto subscribed by such person; and when the hand writing of the grantor or person executing such deed or writing, and of one subscribing witness, (if any there be,) shall have been proved as aforesaid, the judge or officer shall grant a certificate thereof, stating the proof aforesaid.

SEC. 12. It shall and may be lawful for any married woman to release her right of dower, of, in, and to any lands and tenements, whereof her husband may be possessed or seized, by any legal or equitable title during coverture, by joining such husband in the deed or conveyance, for the conveying of such lands and tenements, and appearing and acknowledging the same before any judge or other officer authorized to take acknowledgments by this act; and it shall be the duty of such judge or other officer, if such woman be not personally known to him, to be the person who subscribed such deed or conveyance, to ascertain the same by the testimony, of at least one competent and credible witness; and upon being satisfied of that fact, shall acquaint such woman with the contents of the deed or conveyance, and shall examine her separate and apart from her husband, whether she executed the same, and relinquished her dower to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her said husband; and if she acknowledge that she executed the same, and relinquishes her dower in the lands and tenements therein mentioned voluntarily and freely and without the compulsion of her husband, such judge or other officer shall grant a certificate, to be endorsed on, or annexed to such deed, stating that such woman was personally known to him, or was proved by a witness, (naming him,) to be the person who subscribed such deed or writing; and that she was made acquainted with the contents thereof, and was examined, and acknowledged such deed as aforesaid; which, being recorded, together with the deed, duly executed and acknowledged by the

Relinquishment of dower.

Identity of person how ascertained.

Certificate.

Effect of. husband according to law, shall be sufficient to discharge and bar the claim of such woman to dower, in the lands and tenements conveyed by such deed or conveyance.

Husband and wife may convey real estate of the wife. Sec. 13. When any husband and wife residing in this state, shall wish to convey the real estate of the wife, it shall and may be lawful for the said husband and wife, she being above the age of eighteen years, to execute any grant, bargain, sale, lease, release, feoffment, deed, conveyance, or assurance, in law whatsoever, for the conveying of such lands, tenements, and hereditaments; and if after the executing thereof, such wife shall appear before some judge or other officer, authorized by this act to take acknowledgments, to whom she is known, or proved by a credible witness to be the person who executed such deed or conveyance, such judge or other officer shall make her acquainted with, and explain to her the contents of such deed or conveyance, and examine her separate and apart from her husband, whether she executed the same voluntarily, freely, and without compulsion of her said husband; and if such woman shall, upon such examination, acknowledge such deed or conveyance to be her act and deed, that she executed the same voluntarily and freely, and without compulsion of her husband, and does not wish to retract, the said judge or other officer shall make a certificate endorsed on, or annexed to such deed or conveyance, stating that such woman was personally known to the said judge or other officer, or proved by a witness, (naming him,) to be the person who subscribed such deed or conveyance, and setting forth that the contents were made known and explained to her, and the examination and acknowledgment aforesaid; and such deed, (being acknowledged or proved according to law as to the husband,) shall be as effectual in law as if executed by such woman while sole and unmarried. No covenant or warranty contained in any such deed or conveyance, shall in any manner bind or affect such married woman, or her heirs, further than to convey from her and her heirs effectually, her right and interest expressed to be granted or conveyed in such deed or conveyance.

To operate only as a quit-claim as to the wife. Sec. 14. Where any *feme covert*, not residing in this state, being above the age of eighteen years, shall join with her husband, in any deed, mortgage, conveyance, or other writing of, or relating to any lands or real estate situated within this state, she shall thereby be barred of, and from all claim of dower, and all other interest, claim, seizin, right, and title therein, in like manner as if she were sole and of full age; and the acknowledgment or proof of such deed, mortgage, conveyance or other writing, may be the same, as if she were sole, and shall entitle such deed, mortgage, conveyance, or other writing, to be recorded, as is authorized by this act.

Feme coverts residing out of this state how to convey. Sec. 15. All grants, bargains, sales, leases, releases, mortgages, defeasances, conveyances, bonds, contracts, and agreements, of and concerning any lands, tenements, or hereditaments, or whereby the same may be affected in law or equity, whether executed within or without this state, shall be recorded in the recorder's office in the county where such lands, tenements, or hereditaments are lying and being, within twelve months after the execution of any such writings; and every such writing, that shall,

Deeds to be recorded, (see state recorder) as to lands of non-residents.

at any time after the publication hereof, remain more than twelve months after the making of such writing, and shall not be proved and recorded as aforesaid, shall be adjudged fraudulent and void against any subsequent *bona fide* purchaser or mortgagee, for valuable consideration, unless such deed, conveyance, or other writing be recorded as aforesaid, before the proving and recording of the deed, mortgage, or writing, under which any such subsequent purchaser or mortgagee shall claim.

Sec. 16. All powers or letters of attorney, or agency, authorizing the granting, selling, conveying, assuring, releasing, or transferring, or for the executing or acknowledging of any grants, sales, leases, assurances, or other conveyances, or writings whatsoever, concerning any lands and tenements, or whereby the same may be affected in law or equity, shall be acknowledged or proved, and recorded as herein before required in cases of deeds and other assurances, after which, all grants, conveyances, and assurances, made and acknowledged, pursuant to the powers granted, unless the same be revoked by a deed, duly acknowledged and proven, and recorded as aforesaid, shall be as valid and effectual as if executed and acknowledged by the constituent or constituents.*

Sec. 17. Every deed, conveyance, or other writing, of, or concerning any lands, tenements, or hereditaments, which, by virtue of this act, shall be required or entitled to be recorded as aforesaid, being acknowledged or proved according to the provisions of this act, whether the same be recorded or not, may be read in evidence without any further proof of the execution thereof, and if it shall appear to the satisfaction of the court, that the original deed so acknowledged or proved, and recorded, is lost or not in the power of the party wishing to use it, a transcript of the record thereof, certified by the recorder in whose office the same may be recorded, may be read in evidence, in any court of this state, without proof thereof.

Sec. 18. All acts and parts of acts coming within the purview of this act, are hereby repealed.

This act to take effect from the first day of July next.

APPROVED, Jan. 31, 1827.

AN ACT authorizing Courts of Chancery to decree conveyances in certain cases. *In force December 27, 1824.*

Sec. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That where any person or persons, who have heretofore entered, or may hereafter enter, into any contract, bond, or memorandum, in writing, to make a deed or title to land in this state, for a valuable consideration, and shall depart this life, or have died heretofore, without having executed and delivered said deed, it shall and may be lawful for any court

* Amended. See "act abolishing the office of State Recorder," Sec. 5.

having chancery jurisdiction, in the proper circuit in which such case shall arise, to make decree compelling the executors or administrators of such deceased person to execute and deliver such deed to the party having such equitable right, as aforesaid, to the same, or his heirs, according to the true intent and meaning of said contract, bond, or memorandum, of the deceased; and all such deeds shall be good and valid in law.

SEC. 2. That it shall not be lawful for any court to make such decree as aforesaid, except upon the petition in writing of the person entitled to the benefit of the same, or his heirs, setting forth the said contract, bond, or memorandum in writing, and fully describing the lands to be conveyed; nor until the person or persons so applying for such title, shall have given reasonable notice of the time and place of such application, to the executors, administrators, and heirs of such person so deceased as aforesaid, and shall have fully paid, discharged, and fulfilled the consideration of such contract, bond, or memorandum, in writing, according to the true intent, tenor, and effect thereof.

SEC. 3. That in all cases where any minor heirs shall be interested in such proceeding, as aforesaid, reasonable notice of such application shall be given to the guardian or guardians of such minors; and if there shall be no guardian, then the said court shall appoint a guardian or guardians, to litigate and act in such case.

SEC. 4. That the executors, administrators, or heirs of any deceased person or persons, who shall have made such contract, bond, or memorandum in writing as aforesaid, in his or her life time, for the conveyance of land, for a valuable consideration, when such consideration has been paid and fulfilled as aforesaid, may, upon application in writing, obtain such decree as aforesaid, upon giving notice to the party to whom such deed is intended to be made, and under the same condition as is provided in this act.

SEC. 5. That in all cases where application shall be made as aforesaid, the court shall have power to continue the same from term to term, to obtain such evidence as the nature of the case shall require; and no decree for the conveyance of land, upon application as aforesaid, shall be made, unless the said courts shall be satisfied that decree can be made without injustice to any heir or creditor of the deceased, and that the same is just and equitable.

SEC. 6. That a complete record of such petition and proceedings thereon shall be made, and the court shall decree payment of costs as shall appear right and equitable.

This act to take effect and be in force from and after the passage thereof.

APPROVED, December 17, 1824.

AN ACT to amend the act concerning the conveyance of real property, approved, January 31, 1827, and for other purposes. In force January 22, 1829.

SEC. 1. *Be it enacted by the people of the State of Illinois, re-* Before whom deeds may be acknowledged.
presented in the General Assembly, That all deeds and conveyances of lands lying within this state, may be acknowledged or proved before either of the following named officers, to wit: any judge or justice of the supreme or district court of the United States; any commissioner to take acknowledgments of deeds; any judge or justice of the supreme, superior, or circuit court, of any of the United States, or their territories; any clerk of a court of record; mayor of a city; or notary public; but when such proof or acknowledgment is made before a clerk, mayor, or notary public, it shall be certified by such officer, under his seal of office. Justices of the peace to be certified as such. Such proofs and acknowledgments may also be made before any justice of the peace; but if such justice of the peace reside out of this state, there shall be added to the deed a certificate of the proper clerk, setting forth that the person before whom such proof or acknowledgment was made, was a justice of the peace at the time of making the same. Living out of this state. If such justice of the peace reside within this state, the certificate of the clerk of the county commissioners' court, of the proper county, under his seal of office, that the person taking such proof, or acknowledgment, was a justice of the peace at the time of taking the same, shall be deemed sufficient evidence of that fact. Within the state. If such justice reside within the county, where the lands conveyed are situate, no such certificate shall be required. Within the county. All deeds and conveyances which have been, or may be, acknowledged or proved in the manner prescribed in this section, shall be deemed as good and valid in law, as if the same had been acknowledged or proved in the manner prescribed in the ninth section of the act to which this is an amendment.

SEC. 2. Any conveyance or assignment of certificates of the purchase of land sold for taxes by the auditor of public accounts, may be acknowledged before said auditor, and such acknowledgment shall be deemed good and valid. Assignment of auditor's certificate.

* SEC. 3. All residents of this state who shall have acquired, or may hereafter acquire, title to any lands in this state, which lands are not situate in the county or counties in which he, she, or they may reside, may record the same in the state recorder's office, and such record shall be as valid as though the same were recorded in the county or counties where the lands, conveyed thereby, are situated. Residents' deeds may be recorded in the state recorder's office. The sixth section of the "act establishing a recorder's office, for the state," is hereby repealed.

* SEC. 4. All deeds and conveyances of land lying within this state, which may be executed in this state, after the first day of June next, shall be recorded within six months after the execution of such deeds and conveyances, respectively; and if not recorded within that time, they shall be adjudged void as against any subsequent purchaser, or mortgagee, for valuable consideration, unless such deed or conveyance shall be recorded before the recording of Deeds to be recorded within six months, or be void as against subsequent purchasers.

* Amended. See "an act abolishing the office of State Recorder."

the deed or conveyance under which such subsequent purchaser, or mortgagee, shall claim.

This act to be in force, from and after its passage.

APPROVED, January 22, 1829.

In force
Jan. 7,
1835.

AN ACT concerning Conveyances by County Commissioners.

Convey-
ances, &c.
heretofore
made, valid.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all deeds, grants, conveyances and bonds, heretofore executed by the commissioners of any county in this State without fraud or collusion of, and concerning real estate, owned by the counties of such commissioners, are hereby declared to be good and valid in law, and to operate as though such commissioners had been authorized to execute such deeds, grants, conveyances and bonds, at the time of the execution of the same.

Co. Com.
authorized
to execute
deeds, &c.

SEC. 2. The county commissioners of the several counties of this state, are hereby authorized to execute and deliver all deeds, grants, and conveyances and bonds which may become necessary in settling and transferring real estate belonging to their respective counties; and such deeds, grants, conveyances and bonds, if made without fraud or collusion, shall be obligatory upon the counties to all intents and purposes.

This act shall take effect from its passage.

APPROVED, Jan. 7, 1835.

In force Jan-
nary 16th,
1837.

AN ACT in relation to the title of school and canal lands.

Certificates
of purchase
assignable,
and how
may be
made.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That purchasers of school or canal lands or town lots, may by endorsement in writing on their certificates of purchase, transfer and assign all right and title to the lands or lots purchased, or transfers or assignments of such certificates may be made upon a separate paper, and transferees or assignees, may in like manner transfer and assign all such certificates, and in all cases where certificates have been or shall hereafter be transferred or assigned, patents shall issue in the name of the last transferee or assignee, *Provided,* That the transfers or assignments, shall be proven by certificate of the school or acting canal commissioner; or proven in the manner required to prove the execution of deeds of conveyance, to entitle them to be admitted to record.

Patent to
issue in
name last
assigned.
Proviso.

This act shall take effect from its passage.

APPROVED, Jan. 16th, 1837.

AN ACT concerning Conveyances.

In force
21st July,
1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That every estate in lands which shall hereafter be granted, conveyed or devised to one, although other words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple estate of inheritance if a less estate be not limited by express words, or do not appear to have been granted, conveyed, or devised by construction or operation of law.

Construc-
tion and ef-
fect of con-
veyance.

SEC. 2. When an estate hath been, or shall be, by any conveyance limited in remainder to the son or daughter or to the use of the son or daughter of any person to be begotten, such son or daughter, born after the decease of his or her father, shall take the estate in same manner as if he or she had been born in life time of the father, although no estate shall have been conveyed to support the contingent remainder after his death.

When es-
tate is limit-
ed.

APPROVED, July 21, 1837.

AN ACT concerning the Recording of Conveyances.

In force
21st July,
1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the recording of any deed, grant, bargain, sale, lease, release, mortgage, defeasance, conveyance, bond, contract or agreement of and concerning any lands, tenements, or hereditaments, or whereby the same may be effected in law or equity, whether executed within or without the state, by the recorder of the county in which the lands, tenements or hereditaments, intended to be effected and situated, shall be deemed and taken to be notice to subsequent purchasers, and creditors from the date of such recording, whether the said writing shall have been acknowledged or proven in conformity with the laws of the State or not; *Provided,* That no such writing, not acknowledged or proven in conformity with the laws of the state, to entitle the same to be recorded, shall be admitted as evidence in any court, unless execution thereof be proven in the manner required by the rules of evidence applicable to such writings; and the provisions of this act shall apply as well to writings heretofore, as those hereafter admitted to record.

Record of
deed, &c.
Notice, if
not acknow-
ledged.

Proviso.

Execution
to be prov-
ed.

APPROVED, 21st July, 1837.

AN ACT simplifying the mode of acknowledgment of Sheriff's Deeds.

In force
Jan. 16,
1836.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all deeds heretofore executed, or which may hereafter be executed by any Sheriff or other officer, for any real estate, sold on execution, upon being

Sheriff's
deeds to be
acknowl-
edged or
proved be-
fore clerk.

acknowledged or proven before any clerk of any court of record in this State, and certified under the seal of such court, shall be admitted to record in the county where the real estate sold, shall be situated.

Admitted to record.

Duty of successor to Sheriff.

SEC. 2. The successor of any sheriff or other officer shall be authorized to execute deeds for real estate sold by the predecessor, or to acknowledge any deed executed and not acknowledged by such predecessor.

SEC. 3. Deeds heretofore executed by officers for real estate, sold on execution, and acknowledged or proven, and certified in the manner required by law, for the acknowledgment or proof of deeds of conveyance, shall be considered as having been duly executed.

Deeds acknowledged or proved, deemed valid.

SEC. 4. All deeds executed and acknowledged, or proved, according to the provisions of this act, shall be deemed to have been duly executed, and shall be admitted as evidence, without further proof of the execution thereof.

APPROVED, Jan. 16, 1836.

COUNTIES.

AN ACT to incorporate Counties.

In force July 1, 1837.

All counties incorporated.

Suits brought by counties to be in their name.

Deeds, &c. to counties when valid.

SEC. 1. *Be it enacted by the people of the state of Illinois,* represented in the General Assembly, That each county which now exists, or which may hereafter be established in this state, shall be a body corporate and politic. All suits hereafter to be brought by or against any of the counties in this state, shall be brought in the name of, or against "the county of _____;" and by that name they may sue and be sued, plead and be impleaded, defend and be defended, in any court of record, or other place where justice shall be administered. It shall be the duty of the county commissioners' court of each of the counties of this state to take and order suitable and proper measures for the prosecuting and defending of all suits to to be brought by or against their respective counties.

SEC. 2. All deeds, grants, and conveyances heretofore made, or which shall be hereafter made, and duly acknowledged and recorded, as other deeds conveying any lands, tenements, or hereditaments, to any county or the inhabitants of any county and their successors, or to the county commissioners, or to the county commissioners' court, or to the governor, or any other person or persons by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to all intents and purposes, to vest in such county in fee simple or otherwise, all such right, title, interest, and estate as the grantor or grantors in any such deed or conveyance had at the time of the execution thereof, in the lands conveyed, and was intended thereby to be conveyed.

SEC. 3. The county commissioners' court may, by their order to be entered on their minutes, appoint a commissioner to sell and dispose of any real estate of their county, and the deed of such commissioner, under his proper hand and seal, for, and in behalf of such county, duly acknowledged and recorded, shall be sufficient to all intents and purposes, to convey to the purchaser or purchasers, all the right, title, interest and estate whatever which the county may then have in and to the premises, so to be conveyed.

Power of commissioners' court over county property.

SEC. 4. All notes, bonds, bills, contracts, covenants, agreements, or writings made, or to be made, whereby any person or persons is, are, or shall be bound to any county or the inhabitants thereof, or the county commissioners, or county commissioners' court, or to the governor, or any other person or persons, in whatever form for the payment of money, or any debt or duty, or the performance of any matter or thing to the use of any county, shall be as valid and effectual to all intents and purposes, to vest in the said county all the rights, interest, and actions, which would be vested in any individual, if any such contract had been made directly to him: Suits may be commenced, sued, and prosecuted thereon in the name of said county as is provided in the first section of this act; or in the name of the person to whom they are made, to the use of the county, as fully and effectually, to all intents and purposes, as any person may or can upon like notes, bills, bonds, contracts, agreements, or writings made to him.

Capacity of, to contract.

SEC. 5. The county commissioners' court may appoint an agent or agents, to make any contract on behalf of such county for erecting any county building, or for any other purpose authorized by law. The contracts of such agent or agents duly executed for and on behalf of such county, shall be valid and effectual to bind such county to all intents and purposes.

Court may appoint agents.

SEC. 6. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment and execution in the circuit court of the county against which the action is brought. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment, in the county in which the defendant in such action resides.

Actions against counties and in favor where prosecuted.

—When any action shall be commenced against any county, a copy of the summons shall be left with the clerk of the commissioners' court, either during the sitting of said court, or so as a term of said court shall intervene between the day of leaving a copy of such summons and the return day thereof. There shall always be ten days between the service and return of every such summons. In all actions brought by or against every county, the inhabitants of the county so suing, or being sued, may be jurors or witnesses, if otherwise competent or qualified according to law.

In actions against counties their clerk to be served with the summons. Ten days notice. When county is defendant inhabitants may be jurors.

SEC. 7. When any judgment shall be rendered against any county, it shall be the duty of the county commissioners' court to order a warrant to be drawn on their treasurer for the amount of the judgment and costs; which warrant shall be paid as other county debts. Nothing herein contained shall authorize any execution to be issued against lands or other property of any county of this state.

Duty of commissioners after judgment.

*Acts re-
pealed.*

SEC. 8. All acts and parts of acts coming within the purview of this act, are hereby repealed. This act to take effect from and after the first day of July next: *Provided*, That this act shall not affect any contract or right which may have accrued to, or against any county before the passage of this act; and all actions and suits shall be conducted in the same manner, to final judgment, on the said rights and contracts as if this act had not been passed.

APPROVED, Jan. 3, 1827.

AN ACT to compel the payment of certain moneys into the several county treasuries.

All fines and penalties to be paid over to county treasurer.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That from and after the passage of this act, it shall be the duty of justices of the peace, and of all other officers, to account for, and pay over to the county commissioners' court of the county within which such officer shall reside, at or before the December term of the said court, in each and every year, all sums of money recovered by fine, penalty, or otherwise, which by law is required to be paid into the treasury of the several counties; and in the same kind of funds received by them.

An officer not complying with the first section liable to fine.

SEC. 2. *Be it further enacted*, That any officer failing to comply with the foregoing section, shall forfeit and pay the sum of seventy-five dollars, with any money by him not accounted for and paid over as aforesaid, to be recovered by motion before the circuit court of the county wherein default is made, for the use of said county, together with the costs of said motion: *Provided*, that the officer against whom the motion is made shall have notice thereof at least ten days before the first day of the term at which such motion is made.

APPROVED, Jan. 11, 1823.

AN ACT to authorize additional poll books to be opened at the county seats of the several counties in this state.

In force Feb. 9, 1831.

Commissioners court authorized to organize additional judges, &c. of elections.

Be it enacted by the people of the State of Illinois, represented in the General Assembly; That the county commissioners' courts of the several counties of this state, are authorized, if they deem it necessary, to organize one or more additional sets of judges and clerks of elections in the precinct including the county seat. This act to take effect from and after its passage.

APPROVED, Feb. 9, 1831.

COURTS.

AN ACT establishing the Courts of county Commissioners.

In force March 22, 1889.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That there shall be established in each county of this state, a court of record, to be constituted of, and composed by, the county commissioners elected of the counties respectively, any two of whom shall constitute a quorum to do business.

SEC. 2. That there shall be four sessions of said court in each county, to be held in the court house, or place of holding courts in each county, in each and every year; and said court shall have power to appoint a clerk to said courts; and at any time, for any cause to be stated on the record, to remove the said clerk from office.

*Amended.**

SEC. 3. That the said court shall have jurisdiction throughout the county, whereof the said county commissioners may be elected.

SEC. 4. That said court in each county shall have jurisdiction in all matters and things concerning the county revenue, and regulating and imposing the county tax, and shall have power to grant license for ferries and for taverns, and all other licenses and things that may bring in a county revenue; and shall have jurisdiction in all cases of public roads, canals, turnpike roads, and toll bridges, where the law does not prohibit the said jurisdiction of said courts; and shall have power and jurisdiction to issue all kinds of writs, warrants, process, and proceeding, by the clerk throughout the state, to the necessary execution of the power and jurisdiction with which this court is or may be vested by law.

SEC. 5. That the said court of each county shall have a judicial seal, and all warrants, writs, process, and proceedings to be issued by said court, shall be sealed with said seal, bearing date the time they issue, and be signed by the clerk of said court.

SEC. 6. That each clerk so appointed by said court, shall keep his office at the place of holding court for each county respectively; and each and every clerk before he enters on the duties of his office, shall take an oath to support the constitution of the United States, and of this state, and the oath of office in open court, and enter the same on record, and give a bond with good securities to the county commissioners, for the use of any person or persons injured, or for the use of the county if injured, in the penal sum of one thousand dollars, conditioned for the faithful performance of the duties of his office.

SEC. 7. That in each and every county of this state, and in each and every county that may hereafter be made, the said court of county commissioners shall commence and begin on the first Mondays of March, June, September, and December, in each and every year, and continue for six days, unless the business be sooner done, when said court may rise: and should a quorum of county

* See act of Feb. 7, 1837, under head of Elections:

commissioners not meet at any stated meeting of the said court, then the said court shall be considered to be continued by law from day to day, if necessary, until four of the clock in the afternoon of the second day, and then if a quorum be not present for said court, and business therein to stand continued to the next court in course.

SEC. 8. That should it be necessary to have a called court on any urgent business, then any one of the county commissioners shall have power to call said court, on giving the other two commissioners five days previous notice, and the clerk, before said special term of said court. Said special court shall have the same power and authority as when holding a stated court.

SEC. 9. That there shall be nothing contained or construed in this act, to give the said court any original or appellate jurisdiction in civil or criminal suits or actions, wherein the state is party, or any individual or individuals, bodies politic, or corporate, are parties; but said court shall have jurisdiction in all cases where the matter or thing brought before the said court relates to the public concerns of the county collectively, and all county business: and the said court shall have power to punish for contempts as other courts may do, and have all the power necessary to the right exercise of the jurisdiction with which said court is or may be vested according to law; and the clerks of said courts respectively shall have the same fees, emoluments, and perquisites of office, as are given to the other clerks of courts of this state by law, for the like services, or as may be given therein by law.

SEC. 11. That the said court shall be called and styled "The County Commissioners' Court," of the county respectively, and the process shall be "In the name of the people of the state of Illinois," as in case of other process, and bear test in the name of the clerks respectively.

SEC. 12. That the said court of each county respectively, shall have power and jurisdiction to compel and enforce by writ or writs of attachment, or other process, the orders, decrees, or judgments of said courts respectively, on all those named therein, and bear test in the name of the clerks respectively.

This act to be in force from its passage.

APPROVED, March. 22, 1819.

In force
Jan. 11,
1823.

AN ACT requiring the several Clerks of this state to keep their respective offices at the county seat.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the several clerks of the different courts of this state shall be compelled, and they are hereby required to keep their respective offices at the county seat of their respective counties, and not more than one quarter of a mile from the house of holding said courts; and a failure to com-

ply with the requisitions of this act, shall vacate said clerkship, when it shall be the duty of the court to fill such vacancy.

APPROVED, Jan. 11, 1823.

COUNTY COMMISSIONERS.

AN ACT concerning public officers.

In force
Feb. 12,
1835.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That whenever any vacancy shall happen in the office of County Commissioner by death, resignation or otherwise, the Clerk of the county commissioners' court, when such vacancy shall occur, shall appoint a day to hold a special election to fill such vacancy, and shall give immediate notice to the several judges of elections to hold the same, which election shall be conducted agreeable to the law regulating elections.

Vacancy in
office of
county com-
missioner
how filled.

SEC. 2. That so much of the twenty-second section of an act, entitled "An act to provide for the raising of revenue," approved, Feb. 19, 1827, as requires a statement of the fiscal concerns of the counties to be made at the December term of the county commissioners' court, be, and the same is hereby repealed; and hereafter the statement of the fiscal concerns of the counties, shall be made out at the March term of the county commissioners' court annually.

Part of act
repealed.

APPROVED, Feb. 12, 1835.

AN ACT to amend an act entitled an act establishing the courts of county commissioners, approved March 22, 1819.

In force
March 1st,
1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That at the first term of the county commissioners courts in each and every county of this State, to be held after the first Monday in August 1838, it shall be the duty of each and every one of the clerks of said courts, to prepare three tickets upon one of which shall be written the words one year, upon another the words two years, and upon the other the words three years, which tickets so prepared shall be presented by said clerks to the county commissioners of their counties respectively, and each of said commissioners shall draw one of said tickets.

Clerk to
prepare
tickets, to
be drawn
by county
commis-
sioners.

SEC. 2. The term of service of the commissioner who draws the ticket upon which is written the words one year, shall expire on the first Monday in August in the year 1839; the term of service of the commissioner who draws the ticket upon which is written the words two years, shall expire on the first Monday in August

Term of
service of
county com-
missioners.

in the year 1840 ; and the term of service of the commissioner who draws the ticket upon which is written the words three years, shall expire on the first Monday in August in the year 1841, and it shall be the duty of the clerks of the county commissioners courts respectively, to enter upon the records of said courts which of said commissioners is to continue in office for one year, which for two years, and which for three years.

Clerk to enter upon record.

SEC. 3. On the first Monday in August in the year 1839, and on the first Monday in August in each and every year thereafter, there shall be held an election, held in each and every county in this State, for the election of one county commissioner, whose term of service shall be three years from and after the day of his election, and the county commissioner who has been longest in office, shall always be the presiding officer of the court.

Elections to be held.

SEC. 4. In each and every county which may hereafter be organized in this State, there shall be elected at the first regular election held in said county, three county commissioners who at the first term of their court held after their election, shall proceed to determine their terms of service in the same manner as is provided in the first section of this act, and on the first Monday in August in each and every year thereafter, there shall be elected in said counties, one county commissioner, who shall continue in office three years from after the time of his election.

Commissioners to determine by lot.

Elections to be held.

SEC. 5. Whenever a vacancy shall happen in the office of county commissioner by death, resignation or otherwise, it shall be the duty of the clerk of the county commissioners court of the county in which the vacancy shall happen, to issue his order to the judges of election in the different districts in said county, requiring them on a certain day not less than twenty days from the date of such order, to hold an election to fill such vacancy, *Provided*, That if the term of service of the commissioner whose vacancy is to be filled, would have expired within six months of the happening of said vacancy, it shall not be necessary for the clerk to order an election to fill such vacancy.

Clerk to order an election to fill vacancies.

Proviso.

SEC. 6. All elections provided for in this act, shall be conducted and returns thereof made in the manner provided in an act entitled, "An act regulating elections," approved January 10, 1829.

Manner of conducting elections.

SEC. 7. So much of the 25th section of an act entitled "an act regulating elections, approved January 10th 1829," as relates to the election of county commissioners, is hereby repealed.

Part of an act repealed

This act to take effect from and after its passage.

APPROVED 1st March, 1837.

AN ACT to increase the Compensation of County Commissioners.

In force 21st July, 1837.

Commissioners allowed

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That there shall hereafter be allowed to each county commissioner, in full for his services for*

each day's attendance in holding courts, the sum of two dollars and fifty cents, to be paid on the certificate of the clerk, out of any moneys in the treasury of the county, not otherwise appropriated ; so much of the act regulating the salaries, fees, and compensation of the several officers therein mentioned, approved February 19th, 1827, as fixes the compensation of county commissioners at one dollar and fifty cents per day, is hereby repealed.

\$2 50 per day for services.

APPROVED 21st July, 1837.

COURT HOUSES AND JAILS.

AN ACT authorizing and requiring the county commissioners' courts to cause court houses and jails to be erected, in each and every county in this state.

In force June 1, 1829.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, That it shall be the duty of the county commissioners' courts, in their respective counties, to prepare or cause to be erected, when, in the opinion of said court, the means of the county are such as to justify it, and where they have not heretofore done so, strong and substantial jails, so that prisoners may be confined therein with safety: and the said commissioners are hereby expressly charged with the faithful execution of this law, and they shall make report thereof, respectively, to the circuit court, at the next term in the county, after the same shall have been done, and said report shall be entered upon the records of the said circuit court.*

Jails to be erected.

Co. com'rs charged with the execution of this law.

To report to the circuit court.

SEC. 2. It shall also be the duty of the said county commissioners, in each county, to cause to be erected, when, in the opinion of said court, the means of the county are such as to justify it, a suitable court house in each of their respective counties ; and they shall have power to enter into contracts from time to time, with any person or persons, in behalf of the county, for the erection of such court houses, or finishing any court house already begun, at any regular term of their court, or at any special term they may appoint.

Court house.

SEC. 3. The county commissioners' courts in each county, shall have power to contract, and procure for the use of their respective counties, whenever it shall become necessary, any lot or lots of land, whereon to erect such county buildings, and obtain deeds of conveyance to such counties, and to sell and convey the same, when it shall become necessary, to any purchaser or purchasers, in the manner prescribed by law.

Lots to be purchased.

Or sold.

SEC. 4. The act entitled "an act authorizing and requiring the county commissioners to cause jails to be erected in each and every county within the state," approved March 24, 1819, is hereby repealed : *Provided*, that no right previously acquired, shall be impaired by the passage of this act.

Acts repealed.

Previous rights not impaired.

This act to take effect on the first day of June next.

APPROVED, January 5, 1829.

In force June 1, 1929.

AN ACT to amend "An act concerning Courts of Law," approved, January 29, 1827.

Part of former act repealed.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That so much of the first section of the act entitled "An act concerning practice in courts of law," approved January 29, 1827, as authorizes the directing of original process to the sheriff or coroner of any other county than the one in which the suit is commenced, be, and the same is hereby repealed. And that hereafter it shall not be lawful for any plaintiff to sue a defendant out of the county where the latter resides, or may be found, except in cases where the debt, contract, or cause of action accrued in the county of the plaintiff, or where the contract may have, specifically, been made payable; when it shall be lawful to sue in such county, and process may issue against the defendant to the sheriff of the county where he resides: Provided, that where there are several defendants living in different counties, the plaintiff may sue either in the county where the cause of action arose, or in any county where one or more of said defendants may reside, and shall have like process against such as reside out of the county where the action shall be brought as above.

Where persons may be sued, and to what county process may issue.

Several defendants.

Previous rights or proceedings not affected.

SEC. 2. This act shall not affect any previous rights, practice, or proceedings. This act to take effect from and after the first day of June next.

APPROVED, Dec. 30, 1828.

In force June 1, 1829.

AN ACT relating to Courts of Probate.*

Court of probate established.

To be held at the county seats.

Judges to be elected.

Term of service.

Fill the vacancies.

Jurisdiction.

Terms.

SECTION 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, That there shall be established in each county in this state a court of record, to be styled "the court of probate," to be held at the several seats of justice of their respective counties; the jurisdiction whereof shall be co-extensive with the limits of the county in which the judges shall be respectively appointed.

SEC. 2. The general assembly shall, at its present session, elect by joint ballot some fit person in each county in this state, where a vacancy may be in the office of judge of probate, to fill such office, and the respective judges so appointed, shall hold their offices during good behavior. And the general assembly shall in like manner fill all future vacancies in the said office of judge of probate. And the said judges of probate shall severally have such jurisdiction over the estates of testator and intestates, and such other matters as they may be, or now are, invested with by law.

SEC. 3. The said courts shall sit in their respective counties, throughout this state, on the first Monday in every month, and at such other times as extraordinary circumstances may require, and continue open until all the business, pending before them, shall be

* Amended: See "Probate Justices of the Peace."

disposed of. The said courts shall each have a seal, and may issue all process necessary under the hand and seal of the judge, and all such process shall bear date when issued: the said judge shall record all his proceedings, at length, in a book, or books, by him for that purpose furnished: for all necessary books so furnished, the respective county commissioners' courts shall allow the said judge of probate a reasonable compensation, to be paid out of the county treasury.

To have a seal. Process. Record.

Allowance for necessary books.

SEC. 4. All matters of law and of fact shall be determined by said court, when properly before it; and in all cases, an appeal or writ of error, shall lie to the circuit court of the county, to be prosecuted in the same manner as appeals and writs of error are prosecuted from the decisions of the circuit courts; and writs of error and appeals shall also be on the same matters, from the decision of the circuit court to the supreme court of the state, as in other cases.

Trial. Appeal.

SEC. 5. When any judge of probate shall die, resign, refuse to qualify, or be removed from office, or the office shall be otherwise vacated during the recess of the general assembly, the governor shall commission some fit person to fill such vacancy, and the person so commissioned shall continue in office until the end of the next session of the general assembly thereafter.

Recess appointments.

SEC. 6. Each of said judges, before he enters upon the duties of his office, shall take an oath to support the constitution of the United States, and of this state, and an oath of office, to be administered by the clerk of the circuit court, or any justice of the peace in the county wherein he is appointed.

Judge to take an oath.

SEC. 7. The said judges of probate shall be entitled to such fees and compensation as now are, or hereafter shall be provided by law.

Fees.

SEC. 8. The act entitled an act establishing courts of probate, approved February 10, 1821, the act entitled an act to amend an act entitled an act establishing courts of probate, approved February 12, 1823, and the act entitled an act to amend an act, entitled an act establishing courts of probate, approved February 10, 1821, approved January 12, 1825, are severally hereby repealed: Provided, however, that no new election shall be had for judges of probate, where the office is now filled according to those acts, but they shall hold their offices in the same manner as if this act had not passed.

Acts repealed.

This act to take effect on the first day of June next.

APPROVED, January 2, 1829.

AN ACT establishing a Circuit Court north of the Illinois river. In force Jan. 9, 1829.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That there shall be elected by joint ballot of both branches of the general assembly, at the present session, one circuit judge, who shall preside in the circuit to which he may be appointed, north of the Illinois river, and shall

Judge to be elected.

exercise such jurisdiction therein, as is, or may be allowed to the circuit courts, generally, in this state.

His compensation. SEC. 2. The said circuit judge, when thus elected, shall be commissioned by the governor, and shall hold his office during good behavior, and shall be allowed, as a compensation for his services, a salary of seven hundred dollars per annum, to be paid quarter yearly, out of any moneys in the treasury not otherwise appropriated.

APPROVED, Jan. 8, 1829.

AN ACT regulating the Supreme and Circuit Courts.

In force July 1, 1829.

Number of justices.

Jurisdiction.

Incidental power.

Judgments to be final.

Rules of court.

Clerk's office to be examined.

Oaths of the judges.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the supreme court of this state shall consist of one chief justice and three associate justices as prescribed by the constitution of this state.

SEC. 2. The said supreme court shall exercise appellate jurisdiction only (except as is hereinafter excepted) and shall have final and conclusive jurisdiction of all matters of appeal, error or, complaints from the judgment or decrees of any of the circuit courts of this state, and from such other inferior courts as may hereafter be established by law in all matters of law and equity, wherein the rules of law, or principles of equity appear from the files, records, or exhibits of any such court to have been erroneously adjudged and determined. And the said supreme court is hereby empowered, authorized, and enabled to take cognizance of all such causes as shall be brought before them, in manner aforesaid and shall be vested with all the power and authority necessary for carrying into complete execution all their judgments, decrees, and determinations in the matters aforesaid according to the laws, customs, and usages of this state, and according to the rules and principles of the common law, and their judgments, decrees, and determinations shall be final and conclusive on all the parties concerned.

SEC. 3. The said supreme court may, from time to time, institute such rules of practice, and prescribe such forms of process to be used, and for the keeping of the dockets, records, and proceedings for the regulation of the said court, as shall be deemed most conducive to the due administration of justice; and it shall be the duty of the chief justice to examine the state of the clerk's office of the said court annually and make report thereof to the next term of the court, which shall be noted in the proceedings.

SEC. 4. The chief justice and associate justices of the supreme court and the judges of the circuit courts, who may hereafter be appointed under the provisions of the constitution, previously to their entering upon the duties required of them by law, shall in addition to the oath to support the constitution of the United States and of this state take the following oath of office: "I, A B, chief justice (or associate justice as the case may be) of the supreme court (or judge of the circuit court as the case may be) do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, without

sale or denial, promptly without delay, conformably to the laws, without favor, affection, or partiality to the best of my judgment and abilities," which oath or affirmation may be administered by any justice of the peace in this state, a certificate whereof shall be endorsed by the person administering the same, on the back of the commission of such judge, and another certificate thereof transmitted to and filed in the office of the secretary of state.

To be filed with the secretary of state.

SEC. 5. There shall be one term of the supreme court holden annually at the seat of government, which shall commence on the first Monday in December, and continue in session until the business before it shall be disposed of.

One term a year.

SEC. 6. If there shall not be a quorum of the justices of the said supreme court present, on the first day of any term, the court shall stand adjourned from day to day, until a quorum shall attend.

Quorum not attending first day.

SEC. 7. If the said supreme court, or any of the circuit courts, directed to be held by this act, shall not sit in any term, or shall not continue to sit the whole term, or before the end of the term shall not have heard and determined all matters and causes, depending in said courts; all matters and causes depending and undetermined, shall stand continued until the next succeeding term.

Unfinished business to stand continued.

SEC. 8. If from any causes the supreme court shall not sit, on any day in a term, after it shall have opened, there shall be no discontinuance, but so soon as the cause is removed, the court shall proceed to business until the end of the term, or until the business depending before it, shall be disposed of.

Discontinuance by reason of the court not sitting cured.

SEC. 9. No question of appeal, or of writ of error shall be decided without the concurrence of two justices at least; and the said court shall in all cases state the case, and give their opinion in writing, which shall be filed with the other papers of the case. And the said court shall appoint some person learned in the law to minute down, and make report of all the principal matters drawn out at length, with the opinion of the court, in all such cases as may be tried before the said court, and the said reporter shall have a right to use the original written opinion after it shall have been recorded by the clerk.

Two justices must concur. Written opinions.

Reporter.

SEC. 10. All process which shall be issued from the said supreme court shall bear test in the name of the chief justice, be signed by the clerk, dated when issued, and sealed with the seal of the court; and all such process shall be made returnable according to law, or such rules and orders as may be prescribed by the court.

Process how to bear test, and issued.

SEC. 11. Any process which may be issued from the said supreme court, or any justice thereof, or the clerk, according to law, shall be executed by the officer or person to whom it shall be directed, in any county or place in this state, in the usual manner that process is or may be required to be executed and returned. The said court shall have power to punish contempts offered by any person to it while sitting, and for disobeying any of its process, rules, and orders issued or made conformably to law.

Process how executed.

Contempts and disobeying process.

SEC. 12. The supreme court shall have original jurisdiction, in all causes, suits, and motions against public debtors, sheriffs, clerks, and all collectors of the public revenue to the state, of every

Original jurisdiction of the supreme court

Proceedings against public debtors.
 Securities of collectors

denomination whatsoever ; and in all cases where it may have been, or may hereafter be the duty of any sheriff, clerk, collector, or receiver of public moneys for the state, or the late territory of Illinois, to make collections and settlements with the proper authority ; if he or they have failed to do so, or shall hereafter have failed to do so, and there shall appear any defect in the bond given by said officer or person, or other proceeding sufficient to exempt from liability, the security or securities of such officer or person, or to defeat the ordinary proceedings against himself, the court shall have power to compel such person, whether in or out of office, who has either collected public money or ought to have done so, to exhibit upon oath, a full and fair statement of all moneys by him collected, and a list of all persons as far as it may be practicable, to obtain the same, of whom such person had a right to collect, and who had failed to pay him accordingly ; and the court shall, upon hearing the whole case, without regard to form, have power to give such judgment, for such sum or sums of money, as such person ought to be liable to pay, according to the true spirit of the law and the principles of equity : *Provided*, that the person or persons as aforesaid, shall have due and reasonable notice of the time of proceeding against him or them, as aforesaid ; and it shall be the duty of the attorney general to attend and prosecute the same.

Clerk to issue process.
 His duty.
 Oath of clerk.

And bond.
 Condition thereof.

Sec. 13. It shall be the duty of the clerk of the supreme court, to issue process in all cases where process ought to be issued from the said court ; and to keep and preserve complete records of all the decisions and proceedings of the said court ; he shall, before he enters upon the duties of his office, take the following oath or affirmation before one of the justices of the supreme court : " I, A B, being appointed clerk of the supreme court, do solemnly swear (or affirm) that I will truly and faithfully enter on record all the orders, decrees, judgments, and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding according to law ;" and the said clerk shall keep his office at the seat of government, and shall do and perform all such acts and things as are or may be enjoined on him, and be entitled to such compensation as is or may be provided by law. And he shall, at the first term of said court, after he shall be appointed, give bond to the governor of this state, and his successors in office, for the use of the people of the state, with one or more securities, to be approved by the said court, in the sum of three thousand dollars, conditioned for the faithful discharge of his duties, and to deliver up the papers, books, and records, appertaining to the same, whole, safe, and undefaced, when lawfully required so to do ; which bond so executed as aforesaid, shall be transmitted to the office of the secretary of state, and filed therein.

Judges to hold circuit courts.
 Inter-change of circuits.

Sec. 14. The chief justice and associate justices of the said supreme court, shall hold circuit courts, as is herein provided for by law ; and when either of the said judges shall, by death, resignation, removal from office, or unavoidable absence, fail to attend and hold any of the circuit courts required of him by law,

it shall be the duty of one of the other judges presiding in either of the other circuits, upon receiving information that such courts will not be holden, to attend in the said circuit, so situated, and hold courts therein, and exercise all the powers and jurisdiction, both in term time and vacation, that the judge assigned by law to such circuit could legally do, until the causes aforesaid, which authorize and require such judge to exercise such power and jurisdiction, in such circuit, shall be removed.

Sec. 15. When any of the said judges shall die, resign, or be removed from office, it shall be the duty of his successor in office to preside in the circuit wherein such vacancy happens. *New judges to hold courts in the circuit of their predecessors.*

Sec. 16. If there shall be no judge attending in any county, on the first day of any term, the court shall stand adjourned from day to day until a judge shall attend, if that should happen before the hour of four o'clock in the afternoon of the second day ; but if no judge shall have attended before that time, the court shall stand adjourned until the next succeeding term. *Judge not attending, court to stand adjourned.*

Sec. 17. It shall be the duty of the said judges respectively, to hold two terms annually, in each county in their respective circuits, in conformity to law ; which courts shall be holden respectively at the times and places now, or hereafter to be prescribed by law ; and the said courts shall be styled " circuit courts for the counties in which they may be held respectively." *Two terms annually.*

Sec. 18. The said circuit courts shall be holden at the respective court houses of said counties, and the said judges respectively, in their respective circuits shall have jurisdiction over all matters at common law and in chancery, arising in each of the counties in their respective circuits, where the debt or demand shall exceed twenty dollars. *At the court house in each county. Jurisdiction.*

Sec. 19. The said judges shall be conservators of the peace, and the said courts in term time, and the judges thereof in vacation, shall have power to award throughout the state, and returnable in the proper county, writs of injunction, *ne exeat, habeas corpus*, and all other writs and process, that may be necessary to the due execution of the powers with which they are or may be vested. *Judges made keepers of the peace. And may award writs of ne exeat, &c. Incidental power.*

Sec. 20. The said courts shall respectively have power and authority to hear and determine all cases of treason and other felony, crimes and misdemeanors of whatever kind that may be committed within any county or place within their respective circuits, and that may be brought before them, by any rules and regulations provided by law. *Criminal jurisdiction.*

Sec. 21. All suits brought in the said circuit courts shall be tried in the counties in which they originated, unless in cases that are or may be specially provided for by law. *Causes to be tried where they originated.*

Sec. 22. The clerks appointed by the said circuit courts, or by the judges thereof in each county, shall, before they enter upon the duties of their offices, respectively take an oath, to support the constitution of the United States, and of this state, and also the following oath of office, before one of the judges of the said circuit courts, or some justice of the peace in this state : " I, A B, being appointed clerk of the circuit court for _____ county, do solemnly swear (or affirm) that I will truly and faithfully enter and record all *Clerks to take an oath. Oath.*

the orders, decrees, judgments, and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding according to law." A certificate whereof, with the appointment, shall be entered on the records of the court at the first term of the court, after the same shall be done.

Duty of clerks.

Complete record.

SEC. 23. The clerks of the respective circuit courts, shall issue process in all cases originating in their respective counties; they shall make, keep, and preserve complete records of all the proceedings and determinations of the courts of which they are clerks, except as is provided in the 23d section of the "Act concerning the practice in courts of law," approved, January 29, 1827. They shall keep their offices at the county seats of their respective counties; and do and perform in the county all the duties which may be enjoined upon them by law; and they shall be entitled to such fees and compensation for their services, as are or shall be allowed by law; and if any clerk of a circuit court, shall neglect or refuse to perform any of the duties enjoined upon him by law, or shall in any manner be guilty of malfeasance in office, he shall be removed from office by the court upon proper complaint being made to the said court or judge, and the said complaint being proved true to the satisfaction of the said court or judge: *Provided*, that the said clerk shall nevertheless have the right of appeal to the supreme court, under the like conditions, as are or may be prescribed by law for other cases.

Clerk may be removed.

But may appeal.

Shall give bond.

Condition thereof.

Where filed.

SEC. 24. The clerk of each circuit court shall, at the first term of the said court, held in his county, after he shall be appointed, enter into bond to the governor of the state, and to his successors in office, for the use of the people of the state of Illinois, with one or more securities, to be approved of by the court, in the sum of two thousand dollars, conditioned for the faithful performance of the duties of his office, and to deliver up the papers, books, records, and proceedings appertaining thereto, whole, safe, and undamaged, when lawfully required so to do, which bond, so executed, shall be transmitted to the office of the secretary of state, and filed therein.

Delivery of papers, &c.

SEC. 25. It shall be the duty of every clerk of the circuit court, hereafter, to be appointed to succeed another, to demand of his predecessor, or the person in whose possession they may be, all the books, papers, and proceedings appertaining to the circuit court of which he shall be appointed clerk: and the said predecessor, or person whose possession the same may be, shall, on such application and demand, deliver them up to the person so appointed; and should any person herein required to give up the books, papers, and proceedings as aforesaid, refuse so to do, on such application and demand, the proper circuit court shall have power to use such compulsory process, and take such measures as may be necessary to coerce the delivery as aforesaid, according to the true intent and meaning hereof.

May be coerced.

Clerks of office shall be examined.

SEC. 26. The judges shall annually examine into the condition of the office of every clerk of the circuit court in their respective circuits, and make such order thereon as circumstances may require.

SEC. 27. Whenever any person shall be in the custody of the sheriff of any county, charged with any capital offence, or any other offence not bailable by law, it shall be the duty of such sheriff, provided such person shall desire a trial, to give information thereof, in writing, to the judge presiding in the circuit, or in case of his absence or disability, to either of the said judges, who may be required to preside in such circuit, during such absence or disability; whose duty it shall be to issue a precept under his hand and seal, to the sheriff of such county, to summon twenty-three grand jurors, and thirty-six petit jurors, to attend at the seat of justice of said county, on a day therein mentioned, which shall not be less than fifteen, nor more than thirty days from the date of such precept.

Special terms to try criminals.

SEC. 28. It shall be the duty of the sheriff, on receiving the precept aforesaid, to give notice by advertisement, set up at the seat of justice of his county, at least ten days before the return of such precept, of the time of holding a special term of the circuit court, in pursuance of this act; and it shall be the duty of the circuit judge, either personally or in writing, to notify the attorney prosecuting for the state, in such county, of the time and place of holding court in pursuance of this act; but the want of such advertisement by the sheriff, or notice by the judge, shall not be construed to invalidate the authority of the court, or to render its proceedings void or erroneous; but in case of such omission, the precept aforesaid shall be considered as legal notice of the time and place of holding such court; and the sheriff, for omitting to advertise in manner aforesaid, may be fined at the discretion of the court, in a sum not exceeding five hundred dollars: *Provided*, that there shall be no such special term of the circuit court, where a regular term of said court will be held within forty days of the time of receiving such notice as aforesaid, by the judges from the sheriff, but in all such cases, the person shall wait until the regular term for his trial.

Notice thereof.

Omission to advertise.

SEC. 29. The said circuit court, when met in pursuance of this act, shall have authority to adjourn to any day which may be adjudged reasonable and expedient, for the fair and impartial trial of any such person, who may be indicted before it, and in case the requisite number of grand and petit jurors shall not attend at the time and place specified in such precept, or the number of petit jurors be reduced by challenge below the number of twelve, the court may order the sheriff to complete the panel of the grand or petit jury from the by-standers, or award a *venire de novo* for a grand or petit jury as the case may require.

Power to adjourn.

Talesmen.

SEC. 30. Any process which may be issued by any of the clerks of the said circuit courts, or any judge thereof, in pursuance of law, shall be executed by the officer or person to whom the same shall be directed, in any county or place in this state, in the same manner that process usually is, or may be required to be executed and returned; and the said circuit courts shall respectively have power to punish all contempts offered by any person or persons to them, while sitting as such, at any regular or special term as aforesaid; and for disobeying any of its process, rules, or orders, issued or made conformably to law. Hereafter, the sala-

Process how executed.

Contempts and disobeying orders, &c.

Salaries. ries of the chief justice and each of the associate justices of the supreme court, shall be one thousand dollars per annum.

Subpenas issued to any county. SEC. 31. The clerks of the several circuit courts shall have power to issue subpenas for witnesses, to any county in this state.

Acts repealed

SEC. 32. The acts entitled "An act regulating and defining the duties of the justices of the supreme court," approved, March 31, 1819, the act entitled "An act changing the terms of the circuit courts, and altering the circuits," approved, February 14, 1821, the act entitled "An act to regulate the terms of the circuit courts, and for other purposes," approved, February 17, 1823, the "Act constituting and regulating the supreme and circuit courts of this state," approved, December 29, 1824, the act entitled "An act supplemental to an act, entitled an act regulating and establishing the supreme and circuit courts of this state," approved, January 17, 1825, the act entitled "An act changing the terms therein named, and regulating the practice in certain cases," approved January 26, 1826, are severally hereby repealed.

New clerks ne ed not be ap pointed.

Nothing in this act shall be so construed, as to require the clerks either of the supreme or any of the circuit courts in this state, to be reappointed or qualified as this act directs, but the same shall continue in office as they now are.

This act takes effect on the first day of July next.

APPROVED, January 19, 1829.

In force January 22, 1829

AN ACT to provide for a suitable place for holding the Supreme Court.

S. E. room of the banking house.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the south-east room on the lower floor of the banking house, be, and the same is hereby appropriated and set apart for the exclusive purpose of holding the supreme court of this state; and, hereafter, the state treasurer shall keep his office in the front room, on the lower floor of said building.

APPROVED, January 22, 1829.

*In force January 23, 1829.**

AN ACT supplemental to the act, entitled "An act regulating the Supreme and Circuit Courts," approved, January 19, 1829.

Who shall hold the circuit courts.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the chief justice of the supreme court, and the associate justices thereof, and the circuit judge appointed at the present session, shall hold the circuit courts

* Amended: see Acts of 1835, following.

in this state, at the times, and in the manner, hereinafter provided, and shall be governed by the same rules, regulations, and restrictions, that are now applicable to the said courts respectively.

SEC. 2. The counties of Pike, Calhoun, Greene, Macoupin, Morgan, Sangamon, Macon, and Tazewell shall constitute the first judicial circuit; the counties of Madison, St. Clair, Monroe, Randolph, Washington, Clinton, Bond, Fayette, Montgomery, and Shelby shall constitute the second judicial circuit; the counties of Gallatin, Hamilton, Jefferson, Marion, Franklin, Perry, Jackson, Union, Alexander, Johnson, and Pope shall constitute the third judicial circuit; the counties of White, Edwards, Wabash, Lawrence, Crawford, Clark, Edgar, Vermilion, Clay, and Wayne shall constitute the fourth judicial circuit, and the counties of Jo Daviess, Peoria, Fulton, Schuyler, and Adams shall constitute the fifth judicial circuit.

Counties of the first circuit.

Of the 2d circuit.

Of the 3d circuit.

Of the 4th circuit.

Of the 5th circuit.

SEC. 3. Samuel D. Lockwood shall perform circuit duties in the first judicial circuit, Theophilus W. Smith shall perform circuit duties in the second judicial circuit, Thomas C. Browne shall perform circuit duties in the third judicial circuit, William Wilson shall perform circuit duties in the fourth judicial circuit, and Richard M. Young shall perform circuit duties in the fifth judicial circuit, and when either of said judges shall be succeeded in office it shall be the duty of his successor in office to preside and hold the courts in the circuit of the judge, or justice, so succeeded.

Lockwood in the 1st circuit.

Smith in the 2d.

Browne in the 3d.

Wilson in the 4th.

Young in the 5th.

Their successors to take their place.

SEC. 4. The said circuit judge shall, before he enters upon the duties of his office, take an oath to support the constitution of the United States and of this state, and the following oath of office, to wit: "I, A B, judge of the fifth judicial circuit of the state of Illinois, do solemnly swear, that I will administer justice, without respect to persons, and do equal right to the poor and to the rich, without sale, denial, favor, affection, or partiality, conformably to the laws, to the best of my judgment and abilities." Which said oath may be administered by any justice of the peace in this state, a certificate whereof shall be endorsed on the commission of said judge, and a duplicate thereof transmitted to, and filed in the office of the secretary of state; and all rules and regulations prescribed in the act, to which this is a supplement, relative to the circuit courts generally in this state, shall be deemed and taken as applicable to the circuit courts, directed to be held in the fifth judicial circuit.

Circuit Judge to take an oath.

Form thereof.

By whom administered.

Former act apply to the 5th circuit.

SEC. 5. The chief justice, and the associate justices of the supreme court, and the judge of the fifth judicial circuit, may interchange, and hold each other's circuit courts as often as they may agree to do the same, and may award writs of *habeas corpus*, *ne exeat*, *certiorari*, and *injunction*, and may grant orders to stay proceedings, which said writs and orders shall run, and have force, in each other's circuits; and such acts, writs, and orders shall have the same effect, and be obeyed in the same manner, as if the said acts, orders, and writs were done, granted, and issued by the proper justice or judge of the circuit.

Interchange circuits.

Powers of the Judges in such cases.

SEC. 6. Should the chief justice or either of the associate justices or the said circuit judge fail to attend in any county, in their respective circuits, on the day appointed for commencing the

Judge not attending court shall stand adjourned.

term of the circuit court, therein, as required by law, the court shall stand adjourned until the next day, and should the judge not attend by four o'clock in the afternoon of the second day of the term, the court shall stand adjourned until the next succeeding term of the court, and all suits, writs, process, indictments, recognizances, and other proceedings shall stand continued over until next term of the court, as effectually as if the same had been continued by the order of the court.

Chancery terms.

SEC. 7. The chief justice and the associate justices, and the said circuit judge, in their respective circuits may, in any regular term thereof, appoint a time for holding a chancery term of the court, to be entered of record, if, in the opinion of the judge making such order, the business of the court shall require it; and all judgments, orders, decrees, and proceedings, made at such special term, shall have the same validity as if made at the regular term appointed by law.

Change of venue on account of interest in the Judge.

SEC. 8. If any judge of the circuit court shall be interested in any suit, or proceeding, in his circuit, it shall be his duty to cause all the papers relating to such suit, or proceeding, and a transcript of the record, if necessary, to be transmitted to the most convenient county in the next adjoining circuit, as in case of a change of venue; and the judge of the circuit, to which such cause shall be transferred, shall proceed thereon, in all respects, as if the same had been originally instituted in his circuit.

See Venue.

Supreme court when held.

Amended: See act of Feb. 18, 1835.

Process how to bear test.

And be issued and returned.

SEC. 9. There shall be one term of the supreme court of this state held, annually, at the seat of government, on the first Monday in December, and shall continue from day to day, Sundays excepted, until all the business therein pending, shall be determined and disposed of.

SEC. 11.* All process which shall be issued from the said circuit courts, shall bear test in the name of the judges thereof, and be signed by the clerks respectively, and dated on the days on which they issue, and be made returnable according to law; and all process issuing from the said circuit courts, shall be sealed with the judicial seal which shall be provided for that purpose; but in case there shall not be a judicial seal, the clerk shall affix his private seal until a public one shall be provided.

Change of terms not to affect proceedings.

SEC. 12. All recognizances and other obligations, suits, actions, and motions, indictments, and other proceedings, and all writs and process of every kind, and description, which have been taken, commenced, found, or issued, in pursuance of the laws now in force, shall be set for argument, or trial, or shall be deemed and taken as returnable to each circuit court, respectively, as directed to be held by this act, and may be proceeded on, as though no change had taken place.

APPROVED, January 23, 1829.

* Amended: See Act of Feb. 25, 1837, entitled "An act concerning process."

AN ACT regulating the Office of Clerk of the Supreme Court. In force Feb. 15, 1831.

Be it enacted by the People of the State of Illinois, represented in the General Assembly, That the supreme court or a majority thereof, shall have power to remove any clerk of said court, for neglect of duty, incompetency to perform the duties of his office, or for any mal-conduct in office of which he may be guilty, or for any other cause which shall be satisfactory to said court, or a majority thereof: Provided, that the cause of the removal of said clerk shall be expressed on the records of the court.

Supreme court may remove clerk, for certain causes.

APPROVED, Feb. 15, 1831.

AN ACT supplemental to the several acts regulating the Supreme and Circuit Courts in this state. In force Feb. 16, 1831.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the chief justice of the supreme court, and the associate justices thereof, and the circuit judge of the fifth judicial circuit, shall hold the circuit courts of this state, at the times, and in the manner hereinafter provided.*

SEC. 2. The counties of Pike, Callhoun, Greene, Morgan, Sangamon, Tazewell, Macon, McLean, and Macoupin shall constitute the first judicial circuit: The counties of Madison, St. Clair, Monroe, Randolph, Washington, Clinton, Bond, Shelby, Fayette, and Montgomery shall constitute the second judicial circuit: The counties of Gallatin, Pope, Johnson, Alexander, Union, Jackson, Perry, Franklin, Marion, Jefferson, and Hamilton shall constitute the third judicial circuit: The counties of White, Edwards, Wabash, Lawrence, Wayne, Clark, Crawford, Edgar, Vermilion, Coles, and Clay shall constitute the fourth judicial circuit: The counties of Cook, La Salle, Putnam, Peoria, Fulton, Schuyler, Adams, Hancock, McDonough, Knox, Warren, Jo Daviess, Mercer, Rock Island, and Henry shall constitute the fifth Judicial circuit.

SEC. 3. Samuel D. Lockwood shall perform circuit duties in the first judicial circuit; Theophilus W. Smith in the second; Thomas C. Browne in the third; William Wilson in the fourth; and Richard M. Young in the fifth; and when either of the said judges shall be succeeded in office, it shall be the duty of his successor to preside, and hold the courts in the circuit of the judge or justice who shall be so succeeded.

SEC. 4. There shall be two terms of the circuit court held, annually, in each of the counties now, or hereafter to be organized in this state, at the court-house thereof, or place provided for holding court; which terms shall commence at the times hereinafter specified, and continue to be held from day to day, Sundays excepted, until all the business pending shall be disposed of, unless

* See acts of 1835, following.

Terms. it shall be necessary to close the term to enable the judge to attend in the next county to hold court. Said terms shall be commenced and held at the times following, that is to say: In the county of Pike on the fourth Mondays in March, and third Mondays in August. In the county of Greene on the first Mondays in April, and fourth Mondays in August. In the county of Macoupin on the second Mondays in April, and the Mondays after the fourth Mondays in August. In the county of Morgan on the third Mondays in April, and second Mondays after the fourth Mondays in August. In the county of Sangamon on the fourth Mondays in April, and third Mondays after the fourth Mondays in August. In the county of Macon on the first Mondays after the fourth Mondays in April, and fourth Mondays after the fourth Mondays in August. In the county of McLean on the Thursdays thereafter; and in the county of Tazewell on the second Mondays after the fourth Mondays in April, and fifth Mondays after the fourth Mondays in August. In the county of St. Clair on the first Mondays in April and September. In the county of Monroe on the third Mondays in April and September. In the county of Randolph on the fourth Mondays in April and September. In the county of Washington on the first Mondays in May and October. In the county of Clinton on the next Wednesdays thereafter. In the county of Bond on the second Mondays in May and October. In the county of Montgomery on the next Thursdays thereafter. In the county of Shelby on the third Mondays in May and October. In the county of Fayette on the next Thursdays thereafter. In the county of Madison on the second Mondays in June, and third Mondays in October. In the county of Gallatin on the first Mondays in March and September. In the county of Hamilton on the third Mondays in March and September. In the county of Jefferson on the next Thursdays thereafter. In the county of Marion on the fourth Mondays in March and September. In the county of Perry on the Fridays thereafter. In the county of Franklin on the first Mondays in April and October. In the county of Jackson on the second Mondays in April and October. In the county of Union on the third Mondays in April and October. In the county of Alexander on the fourth Mondays in April and October. In the county of Johnson on the Fridays thereafter; and in the county of Pope on the first Mondays in May and November. In the county of White on the first Mondays in April and September. In the county of Edwards on the second Mondays in April and September. In the county of Wabash on the next Thursdays thereafter. In the county of Lawrence on the third Mondays in April and September. In the county of Crawford on the Thursdays thereafter. In the county of Clark on the fourth Mondays in April and September. In the county of Edgar on the Thursdays thereafter. In the county of Vermilion on the Mondays after the fourth Mondays in April and September. In the county of Coles on the Fridays after the Mondays on which the court in Vermilion is held. In the county of Clay on the last Mondays in March and August. In the county of Wayne on the Wednesdays thereafter. In the county of Jo Daviess on the second Mondays in April and last Mondays in August. In the county of Cook on the fourth Mondays in April, and second Mondays in September. In the county

1st circuit.

2d circuit.

3d circuit.

4th circuit.

of La Salle on the Fridays after the fourth Mondays in April, and the Fridays after the second Mondays in September. In the county of Putnam on the first Mondays in May, and the third Mondays in September. In the county of Peoria on the Thursdays after the first Mondays in May, and the Thursdays after the third Mondays in September. In the county of Fulton on the second Mondays in May, and fourth Mondays in September. In the county of Schuyler on the third Mondays in May, and first Mondays in October. In the county of Adams on the fourth Mondays in May, and second Mondays in October. In the county of Hancock on the first Mondays in June and third Mondays in October. In the county of McDonough on the Fridays after the first Mondays in June, and the Fridays after the third Mondays in October. In the county of Knox on the second Mondays in June, and fourth Mondays in October. In the county of Warren on the Thursdays after the second Mondays in June, and on the Thursdays after the fourth Mondays in October; and in the counties of Mercer, Henry, and Rock Island, whenever the same, or either of them, shall be organized in pursuance of law, at such times as the judge of the fifth judicial circuit shall appoint.

5th circuit.

SEC. 5. All writs, and other process, heretofore made returnable to the terms provided in the act to which this is an amendment, shall be taken and held valid, and returnable to the terms herein provided for.

Process.

APPROVED, Feb. 16, 1831.

AN ACT fixing the time of holding Circuit Courts in the counties of Madison and Calhoun.

In force Feb. 16, 1831.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the circuit courts shall be held in the county of Calhoun on the first Friday after the last Mondays in March, and third Mondays in August; and in the county of Madison on the fourth Monday of October, any law to the contrary notwithstanding.

Calhoun. *Amended. Madison autumnal term.

SEC. 2. In all cases wherein a change of venue may be awarded, for any cause whatever, the same may be awarded to the next adjoining circuit, if it may suit the convenience of the parties, as well as to any county in which the suit was instituted.

Change of venue to adjoining circuit.

SEC. 3. The circuit court of Pike county shall be held on the last Monday in March, any law to the contrary notwithstanding.

Pike vernal term.

APPROVED, Feb. 16, 1831.

* See acts of 1835, following.

AN ACT regulating the terms of holding the Circuit Courts in this state.

Terms of circuit courts.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That there shall be two terms of the circuit court held annually in each of the counties now, or hereafter to be organized in this state, at the court house thereof, or place provided for holding courts; which terms shall commence at the times hereinafter specified, and continue to be held from day to day, (Sundays excepted,) until all the business be disposed of, unless it shall be necessary to close the term to enable the judge to attend in the next county to hold court. In the county of Pike, on the fourth Mondays of March and third Mondays of August. In the county of Calhoun on the Fridays after the fourth Mondays of March and third Mondays of August. In the county of Greene on the first Mondays of April and fourth Mondays of August. In the county of Macoupin on the second Mondays of April and Mondays after the fourth Mondays of August. In the county of Sangamon on the third Mondays of April and second Mondays after the fourth Mondays of August. In the county of Macon on the first Mondays after the fourth Mondays of April and fourth Mondays after the fourth Mondays of August. In the county of McLean on the Thursdays thereafter. In the county of Tazewell on the second Mondays after the fourth Mondays of April and fifth Mondays after the fourth Mondays of August. In the county of Morgan on the last Mondays of May and second Mondays of October. In the county of St. Clair on the first Mondays in April and September. In the county of Monroe on the second Wednesdays thereafter. In the county of Randolph on the third Mondays of April and September. In the county of Washington on the next Fridays thereafter. In the county of Clinton on the fourth Mondays of April and September. In the county of Bond on the first Mondays of May and October. In the county of Montgomery on the next Thursdays thereafter. In the county of Shelby on the second Mondays of May and October. In the county of Effingham on the third Mondays of May and October. In the county of Fayette on the Wednesdays thereafter. In the county of Madison on the fourth Mondays of May and October. In the county of Gallatin on the first Mondays of March and September. In the county of Hamilton on the third Mondays of March and September. In the county of Jefferson on the next Thursdays thereafter. In the county of Marion on the fourth Mondays of March and September. In the county of Perry on the next Fridays thereafter. In the county of Frankliu on the first Mondays of April and October. In the county of Jackson on the second Mondays of April and October. In the county of Union on the third Mondays of April and October. In the county of Alexander on the fourth Mondays of April and October. In the county of Johnson on the next Fridays thereafter. In the county of Pope on the first Mondays of May and November.

** Amended.*

** See acts of 1835.*

After the first of August next, the circuit courts in the following named counties shall be held at the times herein specified, viz: In the county of Perry on the second Mondays of April and October. In the county of Jackson on the third Mondays in April and October. In the county of Union on the fourth Mondays of April and October. In the county of Alexander on the Mondays thereafter. In the county of Johnson on the second Mondays in May and November. In the county of Pope on the third Mondays in May and November. In the county of Clay on the last Mondays in March and August. In the county of Wayne on the Thursdays thereafter. In the county of White on the first Mondays of April and September. In the county of Edwards on the second Mondays of April and September. In the county of Wabash on the Thursdays thereafter. In the county of Lawrence on the third Mondays of April and September. In the county of Crawford on the Thursdays thereafter. In the county of Clark on the fourth Mondays of April and September. In the county of Edgar on the Thursdays thereafter. In the county of Vermilion on the first Mondays after the fourth Mondays of April and September. In the county of Coles on the second Tuesdays after the fourth Mondays of April and September. In the county of Adams on the first days of April and nineteenth days of August. In the county of Hancock on the eighth days of April and twenty-sixth days of August. In the county of McDonough on the fifteenth days of April and second days of September. In the county of Warren on the twentieth days of April and seventh days of September. In the county of Knox on the twenty-fifth days of April and twelfth days of September. In the county of Jo Daviess on the first days of May and eighteenth days of September. In the county of Cook on the fourteenth days of May and first days of October. In the county of La Salle on the twentieth days of May and seventh days of October. In the county of Putnam on the twenty-fourth days of May and eleventh days of October. In the county of Peoria on the twenty-eighth days of May and fifteenth days of October. In the county of Fulton on the first days of June and nineteenth days of October. In the county of Schuyler on the eighth days of June and twenty-sixth days of October. And in the counties of Henry, Mercer, and Rock Island, whenever the same or either of them shall be organized in pursuance of law, at such times as the judge of the fifth judicial circuit shall appoint.

SEC. 2. Whenever either of the days above mentioned shall happen to be on Sundays, then the courts to be held on that day shall commence on the Monday following; and when the counties of Iroquois and Champaign shall be organized, under the provisions of the acts of this legislature, then the judge of the fourth judicial circuit shall have power to change the time of holding courts in the said counties of Champaign and Iroquois.

SEC. 4. It shall be the duty of the county commissioners' court of Morgan county to summon two panels of jurors for each term of the circuit court of said county, the first to serve the first week of the said court, and the second, the second week of the said court.

When any of the days in the preceding section mentioned, shall happen on Sunday, then the court shall commence on the Monday following. County commissioners of Morgan county to summon two panels of jurors.

Process.

SEC. 5. All process, writs, and recognizances which have been or may be issued and made returnable to the courts, as at present arranged, shall be taken and considered to be returnable to the terms fixed by this act, and shall be as valid as if made returnable to the terms fixed by this act.

APPROVED, March 2, 1833.

*In force
Jan. 7,
1835.*

AN ACT to establish a uniform mode of holding Circuit Courts.

*Five addi-
tional
judges to be
elected.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That there shall be elected by joint ballot of both branches of the General Assembly, at its present session, five judges in addition to the one now authorized by law, who shall preside in the several circuit courts now or hereafter authorized and required to be held in the several counties in this State; and shall exercise and possess such jurisdiction therein as is or may be allowed to the circuit courts in this State.

*Shall be
commis-
sioned by
the Gover-
nor.*

SEC. 2. The said circuit judges, when thus elected, shall be commissioned by the Governor, and shall hold their offices during good behavior. The said judges shall reside in their respective circuits to which they may be assigned. And all laws which require the judges of the supreme court to hold circuit courts, so far as such requisition is concerned, are hereby repealed.

*Two terms
of supreme
court.*

SEC. 3. There shall be two terms of the supreme court held annually at the seat of government.

This act to be in force from and after its passage.

APPROVED, Jan. 7, 1835.

*In force
June 1,
1835.*

*Appeals
may be
taken from
county
commis-
sioners' to
circuit
court.*

Proviso.

*Appellant
to give
bond.*

AN ACT allowing Appeals in certain cases.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That any party to a proceeding had before any county commissioners' court, who may feel aggrieved by the final decision, judgment or order of such court, shall be allowed to appeal to the circuit court of the county in which the decision, judgment or order may have been made: *Provided,* the appeal be prayed during the term of the court at which the decision, judgment or order may be rendered: *And provided,* further, That the party praying appeals shall be required to execute bond, with good security, to be approved by the court, payable to such person, and with such conditions as the court shall require; and after the execution of the appeal bond, the clerk of the commissioners' court shall file with the clerk of the circuit court,

a full and complete transcript of the record and proceedings of the court, together with the appeal bond, and all original papers relating to the case; and the clerk of the circuit court shall thereupon issue a summons against all parties interested in the decision, judgment or order appealed from, as in cases of appeals from judgments of justices of the peace, and if a county be interested, the summons shall issue against the county commissioners of such county.

*Summons
to issue
from cir-
cuit court.
When
county is a
party.*

SEC. 2. The circuit courts shall have jurisdiction to hear and determine all such appeals, and shall give such judgment in respect to the right of the parties, as the commissioners' court should have given, and shall have power to make all such orders, and to issue all such process and notices as may be necessary to bring all persons interested before the court; and on the trial of such appeals, the court shall proceed in all respects as is or may be required in the trial of other appeal cases in said court, and the judgment of the court in the premises, shall be final and conclusive upon the parties, unless an appeal be taken to the supreme court. The said circuit court shall also have power to remand all such cases to the county commissioners' court, with directions to carry into effect, so far as relates to rights of parties, the judgment of said court: *Provided,* That in cases so remanded, the circuit court shall make out and deliver a written opinion to be entered of record, and transmitted to the county commissioners' court.

*Jurisdic-
tion of cir-
cuit court in
such cases.*

*May re-
mand the
cause.*

Proviso.

SEC. 3. Appeals shall hereafter be allowed from all judgments of justices of the peace, rendered in *qui tam* actions and suits instituted to recover penalties or forfeitures which is or may be allowed by any statute of the State; such appeals to be taken and proceeded in, in all respects as is or may be required in appeals from judgments of justices of the peace in civil actions.

*Appeals al-
lowed in
qui tam ac-
tions.*

This act shall take effect on the first day of June next.

APPROVED, Jan. 31, 1835.

AN ACT dividing the State into Judicial Circuits.

*In force
Jan. 17,
1835.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the counties of Calhoun, Greene, Morgan, Sangamon, Macoupin, Macon, Tazewell, and M'Lean, shall form the first judicial circuit; the counties of Madison, St. Clair, Monroe, Randolph, Washington, Clinton, Bond, Montgomery, Shelby, Effingham, and Fayette, shall form the second judicial circuit; the counties of Hamilton, Jefferson, Franklin, Gallatin, Pope, Johnson, Alexander, Union, Jackson, Marion and Perry, shall form the third judicial circuit; the counties of Wayne, White, Edwards, Wabash, Lawrence, Crawford, Jasper, Clark, Edgar, Vermilion, Champaign, Coles, and Clay, shall form the fourth judicial district; the counties of Pike, Adams, Hancock, M'Donough, Knox, Warren, Fulton and Schuyler,

1st circuit.

2d circuit.

3d circuit.

4th circuit.

5th circuit.

shall form the fifth judicial circuit ; and the counties of Jo Daviess, Rock Island, Mercer, Henry, Peoria, Putnam, La Salle, Cook, and Iroquois, shall form the sixth judicial circuit.

6th circuit.

This act to be in force from and after its passage.*

APPROVED, Jan. 17, 1835.

In force
Feb. 13,
1835.

AN ACT regulating the times of holding the Supreme and Circuit Courts, and fixing the Salary of the Circuit Judges.

Times of
holding
supreme
courts.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the terms of the supreme court shall commence on the second Mondays in December and first Mondays in June annually, and the court shall continue in session at each term, until the business before it shall be disposed of.

Judges sal-
ary.

SEC. 2. The salary of the circuit judges of this State, shall be seven hundred and fifty dollars per annum, payable quarterly.

Circuit
judges may
inter-
change cir-
cuits.

SEC. 3. The circuit judges may interchange and hold each other's circuit courts as often as they may agree to do the same, and may award writs of ne-exeat, habeas corpus, certiorari and injunction, and may grant orders to stay proceedings, which said writs and orders shall run and have force in each other's circuits, and such acts, writs and orders, shall have the same effect, and be obeyed in the same manner, as if the said acts, orders and writs were done, granted and issued by the proper judge of the circuit.

May order
special
terms.

SEC. 4. The circuit judges in their respective circuits, may at any regular term of the court in any county, make an order appointing a time for holding a special term of the court, for hearing and deciding chancery causes, and shall have power at such special terms, to hear and decide all causes, matters and things depending in chancery in such courts, and all proceedings had, and all orders, decrees and judgments made at such special term, shall have the same validity as if had or made at a regular term appointed by law. The said judges shall also have power at any regular term of a circuit court in any county, to make an order appointing a time for holding a special term of such court, for the trial of civil and criminal causes ; and suits may be instituted, and process made returnable to such special term in the same manner, and with like effect as at a regular term of such court ; and the county commissioners of such county, shall select and cause to be summoned a grand and petit jury, to attend the special term appointed for the trial of civil and criminal cases ; and the court shall have power at such special term to try all civil and criminal causes, and all orders, judgments and proceedings made and had at such special term, shall be as valid and effectual, as if made or had at a regular term of the court.

County
commis-
sioners to
order 48 ju-
rymen in

SEC. 5. The county commissioners' courts of the several counties in which the circuit courts are allowed to set two weeks, are authorized to select forty-eight qualified jurymen, to serve as petit

* Amended. See act of Feb. 4, 1837.

jurors during the term of the circuit court, twenty-four of whom shall be selected to serve during the first week of the court, and summoned to attend on the first day of the term ; and twenty-four shall be selected to serve during the second week of the term, and summoned to attend on the second Monday of the term.

counties
where cir-
cuit courts
sit two
weeks.

SEC. 6. All process, suits and recognizances, which have been or may be issued or entered into, and made returnable to the courts, as at present arranged, shall be taken and considered to be returnable to the terms fixed by this act, and shall be as valid as if made returnable to the terms fixed by this act ; and all process issued and tested in the name of either of the justices of the supreme court, by the clerk of any circuit court, shall be valid to all intents and purposes, and shall be obeyed as though the same had been tested in the name of the circuit judges of such court.

Process re-
turnable to
courts as at
present
arranged.

SEC. 7. The terms of holding the circuit courts in the several counties of this State, shall commence at the times hereinafter specified, and continue to be held from day to day, Sundays excepted, until the business shall be disposed of, unless it shall be necessary to close the term, to enable the judge to attend in the next county to hold court.

Terms of
circuit
courts.

In the county of Sangamon, on the second Mondays in March and July, and the first Mondays in October.

In the county of Morgan, on the fourth Mondays in March, third Mondays in July and October.

In the county of Calhoun, on the Fridays before the second Mondays in April and first Mondays in September.*

In the county of Greene, on the second Mondays in April and first Mondays in September.

In the county of Macoupin, on the third Mondays in April and second Mondays in September.

In the county of Macon, on the fourth Mondays in April and third Mondays in September.

In the county of M'Lean, on the Thursdays after the fourth Mondays in April, and third Mondays in September.

In the county of Tazewell, on the first Mondays after the fourth Mondays in April, and on the fourth Mondays in September.

In the county of Madison, on the second Mondays in March and August.

Amended ;
see act of
Jan. 16,
1836.

In the county of St. Clair, on the fourth Mondays in March and August.

In the county of Monroe, on the first Mondays in April and September.

In the county of Randolph, on the second Mondays in April and September.

In the county of Washington, on the third Mondays in April and September.

In the county of Clinton, on the fourth Mondays in April and September.

In the county of Bond, on the first Mondays in May and October.

In the county of Montgomery, on the second Mondays in May and October.

* Amended : See Act of March 4, 1837, Sec. 1.

In the county of Shelby, on the third Mondays in May and October.

In the county of Effingham, on the Fridays after the third Mondays in May and October.

In the county of Fayette, on the fourth Mondays in May and October.

In the county of Marion, on the second Mondays in March and September.

In the county of Jefferson, on the Thursdays thereafter.

In the county of Hamilton, on the third Mondays in March and September.

In the county of Franklin, on the fourth Mondays in March and September.

In the county of Gallatin, on the first Mondays in April and October.

In the county of Pope, on the third Mondays in April and October.

In the county of Johnson, on the fourth Mondays in April and October.

In the county of Union, on the first Mondays after the fourth Mondays in April and October.

In the county of Alexander, on the second Mondays in May and November.

In the county of Jackson, on the third Mondays in May and November.

In the county of Perry, on the fourth Mondays in May and November.

In the county of Crawford, on the first Mondays in March and September.

In the county of Lawrence, on the Thursdays thereafter.

In the county of Wabash, on the second Mondays in March and September.

In the county of Edwards, on the Fridays thereafter.

In the county of White, on the Mondays after the third Mondays in March and September.*

In the county of Wayne, on the fourth Mondays in March and September.

In the county of Clay, on the Thursdays thereafter.

In the county of Jasper, on the Mondays after the fourth Mondays of March and September.

In the county of Coles, on the Wednesdays thereafter.

In the county of Champaign, on the second Mondays after the fourth Mondays in March and September.

In the county of Vermilion, on the Wednesdays thereafter.

In the county of Edgar, on the Wednesdays thereafter.

In the county of Clark, on the Tuesdays thereafter.

In the county of Pike, on the first Mondays in April and September.

In the county of Adams, on the second Mondays of April and September.

In the county of Hancock, on the fourth Mondays in April and September.

Amended: see act of Jan. 16, 1836.

* *Amended; see Act of Jan. 12, 1836.*

In the county of McDonough, on the first Mondays in May and October.

In the county of Warren, on the second Mondays in May and October.

In the county of Knox, on the third Mondays in May and October.

In the county of Fulton, on the fourth Mondays in May and October.

In the county of Schuyler, on the first Mondays in June and November.

In the county of Jo Daviess, on the first Mondays in April, and second Mondays in August. *Amended: see act of March 4, 1837.*

In the county of Rock Island, on the third Mondays in April, and fourth Mondays in August.

In the county of Peoria, on the fourth Mondays in April, and first Mondays in September.

In the county of Putnam, on the first Mondays in May and second Mondays in September.

In the county of La Salle, on the second Mondays in May and third Mondays in September.

In the county of Iroquois, on the third Mondays in May, and fourth Mondays in September.

In the county of Cook, on the fourth Mondays in May, and first Mondays in October.

In the counties of Mercer and Henry, at such times as shall be appointed by the judge presiding in the sixth circuit, after such court shall be organized.

SEC. 8. There shall be three terms of the circuit court held annually in the counties of Sangamon and Morgan, at the times herein directed. *Three terms annually in the counties of Sangamon and Morgan.*

SEC. 9. Whenever any person shall be in the custody of the sheriff of any county, charged with a capital crime, or any felony, or other offence, punishable by confinement in the penitentiary, it shall be the duty of such sheriff, *When a person charged with a capital crime desires to be tried.* provided, such person shall desire a trial, to give information thereof, in writing, to the judge presiding in the circuit, or in the case of his absence, or disability, to the next nearest circuit judge to the county where the offence is charged to have been committed, whose duty it shall be to issue a precept, under his hand and seal, to the sheriff of such county, to summon twenty-three grand jurors, and twenty-four petit jurors, to attend at the seat of justice of said county on a day therein mentioned, which shall not be less than fifteen nor more than thirty days from the date of said precept; and the twenty-seventh section of an act, regulating the supreme and circuit courts, approved, January 19th, 1829, be, and the same is hereby repealed.

SEC. 10. All laws and parts of laws now in force, relating to the judges of the supreme court, while performing circuit duties, in conferring jurisdiction upon them, defining their duties, or appertaining to them in any way, shall (so far as the same may be applicable,) be taken and construed to be of full force, and binding on all intents and purposes, upon the circuit judges elected by virtue of a law, entitled "An act to establish a uniform mode of holding circuit courts," approved, January 7, 1835. *Laws now in force in relation to judges of supreme court binding on judges of circuit court.*

All proceedings now pending to be disposed of as if no alteration had taken place.

SEC. 11. All writs, subpoenas or other process which may have issued from any circuit court since the last sitting thereof, or which may hereafter issue, previous to this act being received, in the respective counties, shall be deemed and taken, and are hereby made returnable on the first day of the next term of the several circuit courts, to be holden by virtue of this act; and all proceedings, either civil or criminal, which are now pending, shall be taken up and disposed of according to law, in the same manner as if no alteration had been made in the time of holding such courts.

Clerks.

SEC. 12. The several clerks of the circuit courts, appointed or to be appointed under the "Act to establish a uniform mode of holding circuit courts," approved, January 7, 1835, shall give bond, be qualified and exercise the duties of their office, as specified in the act regulating the supreme and circuit courts, approved, January 19, 1829.

Act repealed.

The third section of the act regulating the terms of holding the circuit courts of this State, approved, March 2, 1833, be, and the same is hereby repealed.

APPROVED, Feb. 13, 1835.

This Act is amended by Act of March 4, 1837, following.

In force Jan. 16, 1836.

AN ACT fixing the times of holding the Circuit Courts in the several Counties therein named.

Amended: see act of March 1, 1837.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That the times of holding the circuit courts in the several counties hereinafter mentioned, shall commence at the times hereinafter specified, and shall continue to be held from day to day, Sundays excepted, until the business shall be disposed of, unless it shall be necessary to close the term, to enable the judge to attend in the next county to hold court. In the county of Coles, on the Wednesdays after the courts are to be held in the county of Jasper; in the county of Champaign, on the second Fridays thereafter; in the county of Vermilion, on the Mondays thereafter; in the county of Edgar, on the Mondays thereafter; in the county of Clark, on the Mondays thereafter.

Coles. Champaign. Vermilion. Edgar. Clark. Process.

SEC. 2. All process, suits, and recognizances, which have been, or may be entered into, and made returnable to the aforesaid courts, as at present arranged, shall be taken and considered to be returnable to the terms fixed by this act; and all proceedings, either civil or criminal, which are now pending, shall be taken up and disposed of according to law, in the same way as if no alteration had been made in the time of holding such courts.

Acts repealed.

SEC. 3. All acts, and parts of acts, coming within the provisions of this act, are hereby repealed.

APPROVED, Jan. 16, 1836.

AN ACT to amend an act entitled "An act regulating the times of holding the Supreme and Circuit Courts, and fixing the salary of the Circuit Judges," approved, February 13, 1835. *In force Jan. 12, 1836.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the terms of holding the circuit courts in the county of White, shall commence on the third Mondays in March and September, and continue to be held from day to day, Sundays excepted, until the business shall be disposed of, unless it shall be necessary to close the term, to enable the judge to attend in the next county to hold court; any thing in the act to which this is an amendment, to the contrary notwithstanding.

In White.

SEC. 2. All process, suits and recognizances, which have been, or may be issued, or entered into and made returnable or continued to said courts, as at present arranged, or to any special term thereof, shall be taken and considered to be returnable to the terms fixed by this act, and shall be as valid as if made returnable to the terms fixed by this act.

SEC. 3. This act to be in force from and after its passage.

APPROVED, Jan. 12, 1836.

AN ACT supplemental to the several acts, relating to the Circuit Courts in this State. *In force Jan. 16, 1836.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the terms of the courts for holding courts in the several counties therein, at the times following, namely: In the county of Madison on the second Monday of February and August; in the county of St. Clair on the third Monday of February and August; in the county of Monroe on the fourth Monday in February and August; in the county of Randolph, on the Fridays thereafter; in the county of Washington, on the first Fridays of March and September; in the county of Clinton, on the second Mondays of March and September; in the county of Bond, on the third Monday of March and September.

Terms of courts in 2d circuit. Names of counties.

SEC. 2. In the county of Montgomery, on the fourth Mondays in March and September; in the county of Shelby, on the first Monday of April and October; in the county of Effingham on the Fridays thereafter; in the county of Fayette, on the Mondays thereafter.

SEC. 3. All process, suits and recognizances which have been, or may be issued or entered into and made returnable to the courts as at present arranged, shall be taken and considered, to be returnable, to the times fixed by this act, and shall be valid to all intents and purposes.

APPROVED, January 16, 1836.

In force
Jan. 16,
1836.

AN ACT supplemental to the several acts regulating the Circuit Courts in this State.

Terms of
circuit
courts in
third judi-
cial circuit.

Names of
counties
and when
courts are
held there-
in.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the terms of the courts in the third judicial circuit shall be held at the several places for holding courts in the several counties therein, at the times following, namely: In the county of Marion, on the second Mondays in March, and the fourth Mondays in August; in the county of Jefferson, on the Thursdays thereafter; in the county of Hamilton, on the third Mondays in March, and first Mondays in September; in the county of Franklin, on the fourth Mondays in March, and second Mondays in September; in the county of Gallatin, on the first Mondays in April, and third Mondays in September; in the county of Pope, on the second Mondays in April, and fourth Mondays in September; in the county of Johnson, on the third Mondays in April, and first Mondays in October; in the county of Union, on the fourth Mondays in April, and second Mondays in October; in the county of Alexander, on the first Mondays in May, and third Mondays of October; in the county of Jackson, on the second Mondays of May, and fourth Mondays of October; in the county of Perry, on the third Mondays of May, and first Monday after the fourth Monday of October.

Special
term in
Gallatin.

SEC. 2 That there shall be a special term held in the county of Gallatin, on the third Mondays of July annually.

APPROVED, Jan. 16, 1836.

In force
Jan. 16,
1836.

AN ACT supplemental to an act, changing the terms of holding the Circuit Courts, in the third Judicial Circuit, passed at the present session of the General Assembly.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all process, suits, and recognizances, which have been, or may be issued, or entered into, and made returnable to the courts, as at present arranged, shall be taken, and considered to be returnable to the terms fixed by the act to which this is a supplement, and shall be as valid as if made returnable to the terms fixed by the act to which this is a supplement.

APPROVED, Jan. 16, 1836.

AN ACT concerning process.

In force
May 1st,
1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That from and after the first

day of May next, all process issuing from the circuit courts shall bear test in the name of the respective clerks issuing the same.

SEC. 2. So much of the eleventh section of an act supplemental to the act entitled an act regulating the supreme and circuit courts, approved January 19th, 1829, and so much of the first section of an act concerning practice in courts of law, approved January 29th, 1827, as requires process to bear test in the name of the presiding judge be, and the same is hereby repealed.

This act to take effect and be in force from and after the first day of May next.

APPROVED, Feb. 25, 1837.

AN ACT to legalize certain process in the 3d and 5th judicial circuits. *In force*
January 19,
1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all process of whatever kind or description, issued by any clerk of the circuit court in the 3d judicial circuit, since the resignation of the honorable Jephtha Hardin, Judge thereof, or which may hereafter be issued in the same, bearing test in the name of said Judge, or of any such clerk, or of any other person or officer, shall be, and the same is hereby declared to be good and valid in law in respect to such test; and no such process shall be quashed, set aside, or held to be null and void for any such cause.

SEC. 2 The provisions of the foregoing section shall apply to process issued, or which may be issued in the 5th judicial circuit of this State, subsequent to the resignation of the honorable Richard M. Young, Judge of said circuit.

APPROVED, January 19, 1837.

AN ACT fixing the times of holding circuit courts in the several counties in the fourth judicial circuit. *In force*
June 1st,
1837.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That after this act shall be in force the terms of holding the circuit courts in the several counties in the fourth judicial circuit of this State, shall commence at the times hereinafter specified, and continue to be held from day to day, Sundays excepted, until the business shall be disposed of; unless it shall be necessary to close the term to enable the judge to attend in the next county, to hold court. In the county of Edgar on the first Mondays in March and September; in the county of Vermilion, on the second Mondays in March and September; in the county of Champaign, on the third Mondays in March and September; in the county of Coles, on the Thursdays thereafter; in

Jasper. the county of Jasper on the Thursdays after the fourth Mondays
Clay. in March and September ; in the county of Clay on the Mondays
Wayne. thereafter ; in the county of Wayne, on the Thursdays thereafter ;
White. in the county of White, on the Mondays thereafter ; in the county
Edwards. of Edwards on the Mondays thereafter ; in the county of Wa-
Wabash. bash, on the Thursdays thereafter ; in the county of Lawrence,
Lawrence. on the Wednesdays thereafter ; in the county of Crawford, on the
Crawford. Mondays thereafter ; in county of Clark on the Fridays thereafter.
Clark.

SEC. 2. All processes, suits, and recognizances which have been or may be issued or entered into and made returnable to the courts as at present arranged, shall be taken and considered to be returnable to the terms fixed by this act, and shall be as valid as if made returnable to the terms fixed by this act. This act to be in force after the first day of June next.

APPROVED, March 1, 1837.

In force **AN ACT** prescribing the time of holding the circuit court in the
16th Febru- county of Washington.
ary, 1837.

Circuit SEC. 1. Be it enacted by the People of the State of Illinois,
court of represented in the General Assembly, That the circuit court of the
Washing- county of Washington in the second judicial circuit, shall be held
ton chang- on the Fridays after the first Mondays in March and September,
ed. any thing in the act entitled an act supplemental to the several acts relating to the circuit courts in this State, approved January 16th, 1836, to the contrary notwithstanding.

APPROVED, February 10, 1837.

In force **AN ACT** fixing the terms of the courts of the 1st, 6th, and 7th
4th March, circuits.
1837.

County ad- SEC. 1. Be it enacted by the People of the State of Illinois,
ded. represented in the General Assembly, That the county of Calhoun is hereby added to the fifth judicial circuit, and shall from the passage of this act, compose a part of said circuit, and the circuit courts for said county shall be holden on the Tuesdays before the first Mondays in April and September.

Time of SEC. 2. The times of holding courts in the sixth judicial cir-
holding cuit, shall be as follows : In the county of Jo Daviess on the se-
court in cond Mondays in April, second Mondays in July, and third Mon-
5th circuit days in October ; in the county of Rock Island, on the Thursdays
Sixth. after the third Mondays in April, and on the first Mondays in Sep-
 tember ; in the county of Mercer, on the fourth Mondays in April
 and on the second Mondays in September ; in the county of Henry,
 on the Fridays after the fourth Mondays of April, and second
 Mondays in September ; in the county of Putnam, on the first Mon-
 days in May and third Mondays in September ; in the county of
 Peoria, on the second Mondays in May and fourth Mondays in Sep-
 tember ; in the county of Ogle, on the fourth Mondays in May and

first Mondays in October ; in the county of Winnebago, on the Thursdays after the fourth Mondays in May and first Mondays in October.

SEC. 3. The times of holding the courts of the seventh judicial circuit, shall be as follows : In the county of Iroquois, on the first Mondays in April and October ; in the county of Will, on the second Mondays in April and fourth Mondays in September ; in the county of La Salle on the third Mondays in April and September ; in the county of Kane, on the first Mondays in May and second Mondays in September ; in the county of McHenry, when organized, on the Thursdays after the first Mondays in May and the Thursdays before the second Mondays in September ; in the county of Cook, on the second Mondays in May, third Mondays in August and first Mondays in March.

Seventh
circuit.
Iroquois
and Will.

La Salle
and Kane.

McHenry
and Cook.

SEC. 4. The times of holding the courts in the first judicial circuit hereafter, shall be as follows, to wit : In the county of Sangamon on the first Mondays in March and July, and the second Mondays in October ; in the county of Morgan on the third Mondays in March and third Mondays in July, and fourth Mondays in October ; in the county of Green, on the first Mondays in April, fourth Mondays in July and first Mondays in November ; in the county of Macoupin on the second Mondays in April and September ; in the county of Tazewell, on the third Mondays in April and third Mondays in September ; in the county of M'Lean, on the first Mondays in May and fourth Mondays in September ; in the county of Macon, on the second Mondays in May and first Mondays in October.

First cir-
cuit.
Singam-
on.
Morgan.
Green.

Macoupin.
Tazewell.

McLean.
Macon.

SEC. 5. The circuit judges of the several judicial circuits of this State, now or hereafter to be created, shall have power and they are required to appoint a special term of the court in any of the counties comprising their respective circuits, whenever it may be necessary for the prompt and efficient administration of justice, and whenever any special court shall be held, the clerk of said court shall give the Sheriff of said county notice in writing at least twenty days before said court is to be held, who shall summon twenty-three grand and twenty-four petit jurors, to attend at the court house on the day appointed for holding said court, and said sheriff shall put up notices of the time of holding such court, in at least five of the most public places in said county, and all process which may have been made returnable to the regular term, shall be deemed in law returnable to the said special term appointed as aforesaid.

Power of
Judge to
appoint
special
term.

Clerk to no-
tify Sheriff

Grand and
petit jurors.

Judge of
the 7th cir-
cuit.

SEC. 6. The judge of the seventh judicial circuit, shall continue the several terms of the courts in the counties constituting said circuit, until all the business is disposed of, or until forced to attend the terms in other counties as specified in the third section of this act.

SEC. 7. This act so far as regards the first and seventh judicial circuits, shall not take effect and be in force anterior to the first day of June next, and all the terms of the courts necessary to be held in the counties constituting the seventh and first judicial circuits, shall be held at the times prescribed in the act entitled an act regulating the times of holding the supreme and circuit courts, and fixing the salary of the circuit judges, approved 13th February, 1835.

Not in
force ante-
rior.

SEC. 8. All writs or other process issued and made returnable

Writs and

to the courts in the 5th and 6th judicial circuits as heretofore established, shall be considered as made returnable to the courts to be held under the provisions of this act. This act to take effect and be in force from its passage.

APPROVED, 4th March, 1837.

AN ACT forming an additional Judicial Circuit.

In force Feb. 4, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That an additional judicial circuit is hereby created in this State, composed of the counties of Cook, Will, McHenry, Kane, Lasalle, and Iroquois, which shall be called and known as the seventh judicial circuit.

APPROVED, 4th Feb. 1837.

AN ACT to legalize Processes in the Circuit Courts of this State.

In force 20th July, 1837.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all writs and processes, of whatever kind or description, issued by any of the clerks of the circuit courts of this state, prior to the passage of this act, and bearing teste in the name of the presiding judge, shall be and the same are hereby declared to be good and valid in law, in respect to such teste; and no writs or processes shall be quashed, set aside, or held to be null and void, for any such cause.

This act to take effect and be in force from and after its passage.

APPROVED, 20th July, 1837.

AN ACT to amend an Act concerning Process, approved, February 25, 1837, and for other purposes.

In force July 21st, 1837.

Process issued by clerks declared good

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That all process, of whatever kind or description, issued by any of the clerks of the circuit courts of this state, since the first day of May last, when the above recited act took effect, and bearing teste in the name of the judge of said circuit, be and the same is hereby declared to be good and valid in law, in respect to such teste, in the same manner as though said writs had [borne] teste in the name of the clerks; and no such process shall be quashed or set aside, or held to be null and void for any such cause.

Shall not be quashed.

SEC. 2. The public printer shall immediately insert in his paper, and forward one copy of the above act, to each of the clerks' offices in this state, to be filed by said clerk in his office.

SEC. 3. That when the guardian of the infant heirs of Alexander McAllister, deceased, shall have filed with the probate court of the county of Schuyler, a bond with good and sufficient securities, to be approved of by said court, in such sum as may be deemed sufficient by said court, conditioned for the faithful discharge of the duties enjoined by this act, said guardian shall be, and hereby is empowered to sell and convey by sufficient deeds, all or such number of the lots, belonging to the said Alexander McAllister, deceased, lying in and adjacent to the town of Rushville, in the county of Schuyler, as the court aforesaid may deem most advantageous for the said heirs.

SEC. 4. The aforesaid probate court, may order said lots to be sold for cash or on credit not to exceed ten years, at public or at private sale, as to said court may seem best calculated to secure the interests of the heirs of said Alexander McAllister, deceased.

This act to take effect and be in force from and after its passage.

APPROVED, 21st July, 1837.

COSTS.

AN ACT concerning Costs.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all actions on office bonds for the use of any person; actions on the bonds of executors, administrators or guardians; *qui tam* actions; actions on any penal statute; and in all cases in law or equity, where the plaintiff or person for whose use an action is to be commenced, shall not be a resident of this state, the plaintiff or person for whose use the action is to be commenced, shall, before he institute such suit, file, or cause to be filed with the clerk of the circuit or supreme court in which the action is to be commenced, an instrument in writing, of some responsible person, being a resident of this state, to be approved by the clerk, whereby such person shall acknowledge himself bound to pay, or cause to be paid, all costs which may accrue in such action, either to the opposite party, or to any of the officers of such courts; which instrument in writing may be in the form, and to the purport following, to wit:

A. B. } — Court,
vs.
C. D. }

* I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid, all costs which may accrue in this action either to the opposite party or to any of the officers of this court, in pursuance of the laws of this state. Dated this day of E. F.

Suits may be dismissed.

The attorney shall pay costs.

Residents required in certain cases to give security for costs.

Poor persons may prosecute without paying costs. Counsel to be assigned them.

Plaintiff's costs to be taxed and recovered by execution.

Exception.

When defendant shall recover costs.

Defendant's costs.

Upon demurrer.

If any such action shall be commenced without filing such instrument of writing, the court, on motion, shall dismiss the same, and the attorney of the plaintiff shall pay all costs accruing thereon; and if at any time after the commencement of any suit by a resident of this state, he shall become non-resident; or, if in any case the court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court, with respect to their legal demands, it shall be the duty of the court, on motion of the defendant or any officer of the court, to rule the plaintiff on or before a day, in such rule named, to give security for the payment of costs in such suit: if such plaintiff shall neglect or refuse, on or before the day in such rule named, to file an instrument of writing of some responsible person, being a resident of this state, whereby he shall bind himself to pay all costs which have accrued, or may accrue in such action, the court shall, on motion, dismiss the suit.

Sec. 2. If any court shall, before, or after the commencement of any suit, be satisfied that the plaintiff is a poor person, and unable to prosecute his or her suit, and pay the costs and expenses thereof, they may, in their discretion, permit him or her to commence and prosecute his or her action, as a poor person; and thereupon such person shall have all the necessary writs, process, and proceedings, as in other cases without fees or charge. The court may assign to such person counsel, who, as well as all other officers of the court, shall perform their duties in such suit without any fees, charge or reward: if judgment be entered for the plaintiff, there shall be judgment for his costs; which costs shall be collected for the use of the said officers.

Sec. 3. If any person shall sue in any court of this state, any action, real, personal or mixed, or upon any statute for any offence or wrong immediately personal to the plaintiff, and shall recover any debt or damage in such action, then the plaintiff or demandant shall have judgment to recover costs against the defendant to be taxed; and the same shall be recovered together with the debt or damages by execution, except in the cases hereinafter mentioned.

Sec. 4. If any person shall sue in any court of record of this state, any action, wherein the plaintiff or demandant might have costs in case judgment be given for him, and he be *non-pros'd*, or suffer a discontinuance, or be *non-suited* after appearance of the defendant, or a verdict pass against him, then the defendant shall have judgment to recover his costs against the plaintiff, (except against executors or administrators prosecuting in the right of their testator or intestate,) or demandant to be taxed, and the same shall be recovered of the plaintiff or demandant, by like process as the plaintiff or demandant might have had against the defendant, in case judgment, had been given for such plaintiff or demandant.

Sec. 5. Any person making avowry, justification or cognizance in replevin, if the same be found for him, or the plaintiff be *non-suited* or *non-pros'd*, suffer a discontinuance, or be otherwise barred, then such person shall recover his damages and costs against the plaintiff, in like manner as the plaintiff would have done, if the same had been found against the defendant.

Sec. 6. If, in any action, judgment upon any demurrer, by either party to the action, shall be given against the plaintiff or de-

mandant, the defendant shall recover costs against the plaintiff or demandant. If such judgment be given for the plaintiff or demandant, he shall recover costs against the defendant; and the person so recovering costs, shall have execution for the same.

Sec. 7. Where any defendant in any action, or plaintiff in replevin, shall plead several matters, and any of such matters, upon demurrer joined, shall be adjudged insufficient, or if a verdict shall be found, in any issue of the cause, for the plaintiff or demandant, costs shall be given at the discretion of the court.

Sec. 8. Where there are several counts in any declaration, and any one of them be adjudged insufficient, or a verdict on any issue joined thereon, shall be found for the defendant, costs shall be awarded in the discretion of the court.

Sec. 9. Where several persons are made defendants to any action of trespass, assault, false imprisonment, detinue, replevin, trover, or ejectment, and any one or more of them shall, upon the trial, be acquitted by verdict, every person so acquitted shall recover his costs of suit, in like manner as if such verdict of acquittal had been given in favor of all the defendants.

Sec. 10. In all suits upon any writ of *scire facias*, or upon prohibition, the plaintiff obtaining judgment, or an award of execution, after plea pleaded, or demurrer joined therein, shall recover his costs of suit; if the plaintiff shall be *non-suited*, *non-pros'd*, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs.

Sec. 11. In no case in the circuit court shall the fees of more than four witnesses be taxed against the party against whom judgment is given for costs, unless the court shall certify on their minutes, that more than four witnesses were really necessary; in which case the clerk shall tax the costs of as many witnesses as the court shall so certify.

Sec. 12. In all cases, where any action shall be dismissed for irregularity, or be *non-pros'd* or *non-suited* by reason that the plaintiff neglects to prosecute the same, the defendant shall have judgment for his costs, to be taxed, and have execution thereof.

Sec. 13. In all suits and actions commenced, or to be commenced for, and on behalf of the people of this state, or the governor thereof, or on behalf of the president and directors of the state bank, or for, or on behalf of any county of this state, or in the name of any person for the use of the people of this state, or any county, then and in every such case, if the plaintiff or plaintiffs shall recover any debt or damages in such action or suit, the plaintiff or plaintiffs shall recover costs as any other person in like cases: but if such plaintiff or plaintiffs suffer a discontinuance, or be *non-suited*, or *non-pros'd* or verdict pass against such plaintiff or plaintiffs, the defendant shall not recover any costs whatever. Nothing in this section contained shall extend to any popular action, nor to any action to be prosecuted by any person in behalf of himself and the people or a county, upon any penal statute.

Sec. 14. Upon the complainant dismissing his bill in equity, or the defendant dismissing the same for want of prosecution, the defendant shall recover against the complainant full costs; and in all other cases in chancery, not otherwise directed by law, it shall be

Plaintiff's costs upon demurrer.

Costs to be given at the discretion of the court in certain cases.

Where there are several counts.

Where several defendants to any action of trespass, assault, false imprisonment, detinue, replevin, trover, or ejectment, and any one or more of them shall, upon the trial, be acquitted by verdict, every person so acquitted shall recover his costs of suit, in like manner as if such verdict of acquittal had been given in favor of all the defendants.

On scire facias and prohibition.

Costs for four witnesses only allowed.

Costs in cases of non-suits.

Where the people, &c. are plaintiffs.

Costs when recovered in equity.

in the discretion of the court to award costs or not; and the payment of costs, when awarded, may be compelled by execution.

Cestuy que use bound for costs.

SEC. 15. When any suit shall be commenced in the name of one person, to the use of another, the person to whose use the action is brought shall be held liable and bound for the payment of all costs which the plaintiff may be adjudged or bound to pay, to be recovered by action on the case.

On appeal or certiorari.

*Amended.**

SEC. 16. In all cases of appeal or *certiorari* upon the judgments of justice of the peace, when the judgment of the justice of the peace shall be wholly affirmed or reversed, the party succeeding shall recover from the opposite party his costs, not only in the circuit court but before the justice of the peace, and shall have his execution therefor: not more than fifteen dollars shall be taxed for costs in the circuit court, against the losing party in any such case; whatever costs shall have been made by the party succeeding in such appeal or *certiorari* over and above the said sum of fifteen dollars, shall be paid by himself: where the judgment of the justice of the peace shall be affirmed in part, then the court shall divide the costs between the parties, according to the justice of the case.

Appeal from judge of probate, &c.

On appeals or writs of error to supreme court.

SEC. 17. In all cases of appeal from the decision of a judge of probate, the costs shall be in the discretion of the circuit court.

SEC. 18. If any person shall sue out a writ of error, or take an appeal to the supreme court, to review the judgment of the circuit court, and the same judgment be affirmed, or the writ of error be discontinued or quashed, or the plaintiff in error or appellant be non-sued, the defendant in error or appellee shall recover his costs, and have execution therefor; and if the judgment be reversed, the appellant or plaintiff in error shall recover his costs, and shall have execution therefor, as in other cases.

Per centum, &c. may be awarded.

SEC. 19. In every such case, if the judgment or decree be affirmed in the whole, the party prosecuting such writ of error or appeal shall pay to the opposite party a sum not exceeding ten per centum on the amount of the judgment or decree so attempted to be reversed, at the discretion of the court, and in addition to the costs, shall have judgment and execution thereof: *Provided*, the supreme court shall be of opinion that such appeal or writ of error, was prosecuted for delay.

Costs may be apportioned.

SEC. 20. Where such judgment or decree shall be reversed in part, and affirmed in part, the costs shall be apportioned between the parties, according to the discretion of the supreme court.

Duty of clerks.

SEC. 21. The clerk of any court in this state, is hereby authorized and required to tax and subscribe all bills of costs arising in any cause or proceeding, instituted in the court of which he is clerk, agreeably to the feest which shall, for the time being, be allowed or specified by law; and shall in no case allow any item or charge, unless he shall be satisfied that the service for which it was made, was actually performed in the cause.

Remedy for persons aggrieved.

SEC. 22. If any person shall feel himself aggrieved by the taxation of any bill of costs by the clerk, he may apply to the court in which the action or proceeding was had, to retax the same according to law: if the said court shall find any charge allowed

* See act of Jan. 23, 1829, relating to Justices of the Peace, Sec. 15.

for services not performed, or for which the person charged is not liable, or any item charged higher than by law is allowed, then the court shall correct such taxation, and if the party aggrieved shall have paid such unlawful charge, the clerk shall forfeit all fees allowed to him for taxation; and shall pay to the party aggrieved the whole amount which he may have paid, by reason of the allowing of such unlawful charge. *Liability of clerks.*

SEC. 23. In all cases where either party shall be adjudged to pay costs before final judgment, by reason of setting aside *non-suit*, default, or *non-pross*, or the granting of a continuance or new trial, or otherwise, and in all cases where there is security for costs, or attorney liable for costs, or an action brought to the use of another, and the plaintiff shall be adjudged to pay the costs, either before or upon final judgment, it shall be lawful for the clerk to make out and tax a bill of costs so adjudged to be paid, against the party adjudged to pay the same and against his security for costs, or other person liable for the payment thereof, or either of them, and certify the same under the seal of the court, which being delivered to the sheriff of the proper county, he shall demand payment from the person therein charged; if payment shall not be made accordingly, within thirty days after such demand, the sheriff shall levy the same on the goods and chattels, lands, and tenements of the person so chargeable, and proceed therein in all things as on a writ of *feri facias*. *Fee bills may go out in certain cases before final judgment.*

SEC. 24. All acts and part of acts coming within the purview of this act, are hereby repealed: but all costs, actions, and rights, which have accrued under any law, repealed by this act, are saved from the operation of the foregoing repealing clause. *Acts repealed.*

This act to be in force on the first day of June next.

APPROVED, January 10, 1827.

CRIMINAL CODE.

AN ACT relative to Criminal Jurisprudence.

In force July 1st. 1833.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the following shall, from and after the first day of July next, constitute the code of criminal jurisprudence of this State.

FIRST DIVISION.

Persons capable of committing crimes.

SEC. 1. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be an union or joint operation of act and intention, or criminal negligence. *Definition of crime.*

SEC. 2. Intention is manifested by the circumstances connected *Intention.*

with the perpetration of the offence, and the sound mind, and discretion of the person accused.

Who shall be considered of sound mind.

SEC. 3. A person shall be considered of sound mind who is neither an idiot or lunatic, or affected with insanity ; and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

Infant.

SEC. 4. An infant under the age of ten years, shall not be found guilty of any crime or misdemeanor.

Lunatic.

SEC. 5. A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor, with which he may be charged : *Provided*, the act so charged as criminal, shall have been committed in the condition of insanity.

Idiot.

SEC. 6. An idiot shall not be found guilty, or punished, for any crime or misdemeanor, with which he or she may be charged.

Persons counseling and encouraging infants, &c. to commit crimes to be punished as principals.

SEC. 7. Any person counseling, advising, or encouraging an infant under the age of ten years, lunatic, or idiot, to commit any offence, shall be prosecuted for such offence when committed, as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising, or encouraging, as aforesaid, had he or she committed the offence directly, without the intervention of such infant, lunatic, or idiot.

Married women when acting under the coercion of their husbands.

SEC. 8. A married woman acting under the threats, command, or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable with death, provided it appear from all the facts and circumstances of the case, that violent threats, command, or coercion were used ; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

Drunkenness no excuse for crime, unless when caused by another.

SEC. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance, or force, of some other person or persons for the purpose of causing the perpetration of an offence ; in which case the person or persons so causing said drunkenness, for such malignant purpose, shall be considered principal, or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she, or they had been possessed of sound reason and discretion.

Persons so causing it, to be punished.

SEC. 10. Acts committed by misfortune or accident, shall not be deemed criminal, where it satisfactorily appears, that there was no evil design or intention, or culpable negligence.

Acts committed by accident.

SEC. 11. A person committing a crime, or misdemeanor, not punishable with death, under threats or menaces which sufficiently shew, that his, or her life, or member was in danger ; or that he, or she, had reasonable cause to believe, and did believe, that his, or her life or member was in danger, shall not be found guilty : and such threats or menaces being proved and established, the person or persons compelling by such threats, or menaces, the commission of the offence, shall be considered as principal or principals, and suffer the same punishment, as if he or she, had perpetrated the offence.

Persons committing crimes under threats.

A person who becomes in-

SEC. 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for

the offence during the continuance of the lunacy or insanity. If sane after the verdict of guilty, and before judgment pronounced, such persons become lunatic or insane, then no judgment shall be given, while such lunacy or insanity shall continue.

If sane after the commission of a crime not to be punished during such insanity. Jury to be empaneled to try whether insane or lunatic.

And if after judgment, and before execution of the sentence, such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all of these cases, it shall be the duty of the court to empanel a jury to try the question, whether the accused be, at the time of empanelling, insane or lunatic.

SECOND DIVISION.

Accessories in Crimes.

SEC. 13. An accessory is he or she, who stands by and aids, abets, or assists ; or who not being present aiding, abetting, or assisting, hath advised and encouraged the perpetration of the crime. He or she, who thus aids, abets, or assists, advises, or encourages, shall be deemed and considered as principal, and punished accordingly.

Accessory.

SEC. 14. An accessory after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime.

Accessory after the fact.

Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case, and the enormity of the crime.

THIRD DIVISION.

Who may be Witnesses in Criminal Cases.

SEC. 15. The party or parties injured, shall, in all cases, be competent witnesses, unless he, she, or they, shall be rendered incompetent by reason of his, her, or their infamy or other legal incompetency, other than that of interest ; the credibility of all such witnesses shall be left to the jury as in other cases.

Party injured in all cases to be a competent witness. Credibility.

SEC. 16. No black or mulatto person, or Indian, shall be permitted to give evidence in favor, or against, any white person whatsoever. Every person who shall have one fourth part or more of negro blood, shall be deemed a mulatto, and every person who shall have one half Indian blood, shall be deemed an Indian.

Negroes, &c. not to be witness against white persons.

SEC. 17. Approvers shall not be allowed to give testimony.

Approvers.

SEC. 18. The solemn affirmation of witnesses shall be deemed sufficient. A false and corrupt affirmation shall subject the witness to all the penalties and punishment provided for those who commit wilful and corrupt perjury.

Affirmation. If false, to be deemed perjury.

FOURTH DIVISION.

*Crimes against the Government and People.**Crimes against the Government.*

SEC. 19. Crimes against the government and people, shall consist in treason, and misprision of treason, and can only be committed by persons owing allegiance to the state.

Treason, in what it consists.

SEC. 20. Treason shall consist in levying war against the government and people of this state, in the same, or being adherent to the enemies of this state, giving them aid, advice, and comfort in this state, or elsewhere. Any person being hereof duly convicted of open deed, by two or more witnesses, or voluntary confession in open court, shall suffer the pains and penalty of death : and when the overt act of treason shall be committed, without the limits of this state, the person charged therewith, may be arrested, tried, and punished in any county of this state, within the limits of which he may be found ; and the offence may be charged to have been committed in the county where he may be arrested.

Misprisions of treason.

SEC. 21. Misprisions of treason shall consist in the knowledge and concealment of treason, without otherwise assenting to, or participating in the crime. Any person found guilty thereof, shall be punished by confinement in the penitentiary for any term not exceeding two years.

Punishment.

FIFTH DIVISION.

*Offences against the persons of individuals.**Murder, definition of.*

SEC. 22. Murder is the unlawful killing of a human being, in the peace of the people, with malice aforethought, either express or implied. The unlawful killing may be perpetrated by poisoning, striking, starving, drowning, stabbing, shooting, or by any other of the various forms, or means, by which human nature may be overcome, and death thereby occasioned.

Express malice, definition of.

SEC. 23. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature which is manifested by external circumstances, capable of proof.

Malice implied.

SEC. 24. Malice shall be implied, when no considerable provocation appears, or when all the circumstances of the killing, show an abandoned and malignant heart. The punishment of any person or persons convicted of the crime of murder, shall be death.

*Punishment.**Manslaughter, definition of.*

SEC. 25. Manslaughter is the unlawful killing of a human being without malice express or implied, and without any mixture of deliberation whatever. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.

Voluntary manslaughter.

SEC. 26. In cases of voluntary manslaughter, there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable per-

son, or an attempt by the person killed to commit a serious personal injury on the person killing.

SEC. 27. The killing must be the result of that sudden violent impulse of passion, supposed to be irresistible ; for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and punished as murder. *Must be the result of violent passion.*

SEC. 28. Involuntary manslaughter shall consist in the killing of a human being, without any intent so to do, in the commission of an unlawful act, or a lawful act, which probably [might] produce such a consequence, in an unlawful manner : *Provided always,* That where such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life a human being, or is committed in the prosecution of a felonious intent, the offences shall be deemed and adjudged to be murder. *Involuntary manslaughter, definition of.*

SEC. 29. Every person convicted of the crime of manslaughter shall be punished by imprisonment in the penitentiary for a term not exceeding three years, and fined not exceeding one thousand dollars. *Punishment.*

SEC. 30. In order to make the killing either murder or manslaughter, it is requisite that the party die within a year and a day, after the stroke received, or the cause of death administered ; in the computation of which, the whole of the day on which the hurt was done, shall be reckoned the first. *To constitute the killing either murder or manslaughter, the party must die within a year and day.*

SEC. 31. If the injury be inflicted in one county, and the party die within another county, or without the state, the accused shall be tried in the county where the cause of death was administered. And if the party killing shall be in one county, and the party killed be in another county, at the time the cause of death shall be administered, the accused may be tried in either county. *Accused to be tried in the county where the crime was committed.*

SEC. 32. Justifiable homicide is the killing of a human being in necessary self defence, or in defence of habitation, property, or person, against one who manifestly intends or endeavors by violence or surprise to commit a known felony, such as murder, rape, robbery, burglary, and the like, upon either person or property, or against any person or persons who manifestly intend and endeavor, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of assaulting or offering personal violence to any person dwelling or being therein. *Justifiable homicide, definition of.*

SEC. 33. A bare fear of any of these offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing. It must appear that the circumstances were sufficient to excite the fears of a reasonable person, and that the party killing really acted under the influence of those fears, and not in a spirit of revenge. *Bare fear not sufficient to justify the homicide.*

SEC. 34. If a person kill another in self defence, it must appear that the danger was so urgent and pressing that in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary ; and it must appear also, that the person killed was the assailant, or that the slayer had *Person killing another in self defence*

really and in good faith, endeavored to decline any further struggle before the mortal blow was given.

An officer assaulted in the discharge of his duty, shall be justified in killing the aggressor.

SEC. 35. If an officer in the execution of his office in a criminal case, having legal process, be resisted and assaulted, he shall be justified if he kill the assailant. If an officer or private person attempt to take a person charged with treason, murder, rape, burglary, robbery, arson, perjury, forgery, counterfeiting, or other crime, denominated felony by the common law, and he or they be resisted in the endeavor to take the person accused, and to prevent the escape of the accused by reason of such resistance, he or she be killed, the officer or private person so killing shall be justified: *Provided*, That such officer or private person, previous to such killing, shall have used all reasonable efforts to take the accused without success, and that from all probability there was no prospect of being able to prevent injury from such resistance and the consequent escape of such accused person.

Justifiable homicide may consist in unavoidable necessity.

SEC. 36. Justifiable homicide may also consist in unavoidable necessity, without any will or desire and without any inadvertence or negligence in the party killing. An officer who in the execution of public justice puts a person to death in virtue of a judgment of a competent court of justice, shall be justified. The officer must, however, in the performance of his duty proceed according to the sentence, and the law of the land.

Excusable homicide, definition of.

Instances of.

SEC. 37. Excusable homicide by misadventure, is when a person in doing a lawful act, without any intention of killing, yet unfortunately kills another; as where a man is at work with an axe, and the head flies off and kills a bystander; or where a parent is moderately correcting his child, or master his servant, or scholar, or an officer punishing a criminal, and happens to occasion death, it is only a misadventure; for the act of correction was lawful; but if a parent or master exceed the bounds of moderation, or the officer the sentence under which he acts, either in the manner, the instrument, or quantity of punishment, and death ensue, it will be manslaughter, or murder, according to the circumstances of the case.

All instances as above shall be considered justifiable homicide.

When justifiable the person shall be acquitted.

In justifying the killing, the onus of proof devolves on the accused.

SEC. 38. All other instances which stand upon the same footing of reason and justice as those enumerated, shall be considered justifiable or excusable homicide.

SEC. 39. The homicide appearing to be justifiable or excusable, the person indicted, shall, upon his trial, be fully acquitted and discharged.

SEC. 40. The killing being proved, the burden of proving circumstances of mitigation, or that justify or excuse the homicide, will devolve on the accused, unless the proof on the part of the prosecution, sufficiently manifests that the crime committed only amounts to manslaughter, or that the accused was justified or excused, in committing the homicide.

Mother concealing the death of a bastard child.

Punishment.

SEC. 41. If any woman shall endeavor, privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which if born alive, would be a bastard, so that it may not come to light, whether it shall have been murdered or not, every such mother being convicted thereof, shall suffer imprisonment in the county jail, for a term not exceeding

one year; *Provided however*, That nothing herein contained, shall be so construed as to prevent such mother from being indicted and punished for the murder of such bastard child. *Proviso.*

SEC. 42. The distinction between petit treason and murder, is hereby abolished. Any person who might have been indicted for petit treason, shall hereafter be indicted for murder, and if convicted, be punished accordingly. *Distinction between petit treason and murder abolished.*

SEC. 43. If any person hereafter shall wilfully and maliciously, or by agreement, fight a duel, or single combat, with any engine, instrument, or weapon, the probable consequence of which might be the death of either party, and in so doing, shall kill his antagonist, or any person or persons, or shall inflict such wound, as that the party injured shall die thereof within one year thereafter; every such offender, his second, as well as the second of the person killed, and all aiders, abettors, and counselors, being thereof duly convicted, shall be considered to have committed a high misdemeanor and shall be punished by confinement to labor in the penitentiary, for any term not exceeding five years, nor less than one year. *Duelling.*

Punishment.

SEC. 44. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either; or if any person shall accept a challenge or agree to fight a duel, every person so offending shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust, or emolument, either civil or military, under the government of this state, and be fined in a sum not exceeding one hundred dollars. *Party challenging.*

Party accepting thereof.

Punishment.

SEC. 45. If any person shall willingly or knowingly, carry or deliver any written challenge, or verbally deliver any message intended as, or purporting to be, a challenge, or shall be present at the fighting of any duel as aforesaid, as a second or aid, or give countenance thereto, such person being thereof duly convicted shall be subject to the same fine and disabilities, as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person or persons for fighting a duel, or against their seconds, aiders, abettors, or counselors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message, intended as, or purporting to be a challenge, or for being present at the fighting of any duel, as a second; or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument, or weapon with which the duel shall be fought, or intended to be fought, so that it be alledged in the indictment, that the engine, weapon, or instrument was deadly, the probable consequence of fighting with which, might be the death of either of the parties. *Party delivering a challenge.*

Seconds.

Punishment.

In indictments for duelling, &c. it shall not be necessary to specify the kind of weapon with which the duel was fought.

SEC. 46. Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison, or other noxious or destructive substance or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year, and not more than seven years. And every person who shall administer, or cause to be administered, or taken, any such poison, substance, or liquid,

Poisoning.

Punishment.

When done to procure miscarriage. Punishment. with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars.

Mayhem definition of. SEC. 47. Mayhem consists in unlawfully depriving a human being of a member of his or her body, or disfiguring, or rendering it useless. If any person shall unlawfully cut out, or disable the tongue, put out an eye, slit the nose, ear, or lip, or disable any limb or member of another, or shall voluntarily and of purpose, put out an eye or eyes, every such person shall be guilty of mayhem, and, on conviction, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than three years: *Provided*, That no person shall be found guilty of mayhem, where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had, in good faith, endeavored to decline further combat. But in all other cases where the fact shall happen in actual fight, the party accused, being thereof duly convicted, shall be adjudged guilty of a high misdemeanor, and punished by imprisonment in the penitentiary not exceeding one year, and be fined not exceeding one thousand dollars.

Rape, definition of. SEC. 48. Rape is the carnal knowledge of a female forcibly, and against her will. Every male person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape, shall be punished by confinement in the penitentiary for a term not less than one year, and may extend to life.

Proof of emission not necessary. SEC. 49. It shall not be necessary to prove emission to convict any person of the crime of rape, or the crime against nature.

Crime against nature. Punishment. SEC. 50. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and may extend to life.

Assault, definition of. SEC. 51. An assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.

Assault with intent to murder, &c. Punishment of. SEC. 52. An assault, with an intent to commit murder, rape, mayhem, robbery, or larceny, shall subject the offender to confinement in the penitentiary for a term not less than one year, nor more than fourteen years. An assault with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another,

With intent to inflict a bodily injury. a bodily injury where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a high misdemeanor, and any person thereof duly convicted, shall be fined in a sum not exceeding one thousand dollars, and imprisoned not exceeding one year in the county jail.

Punishment. SEC. 53. Assault and battery is the unlawful beating of another.

False imprisonment, definition of. SEC. 54. False imprisonment is an unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority. Any person convicted of false imprisonment shall be fined in any sum not exceeding five

hundred dollars, or imprisoned not exceeding one year in the county jail. *Punishment.*

SEC. 55. Kidnapping is the forcible abduction or stealing away of a man, woman, or child from his or her own country, and sending or taking him or her into another. *Kidnaping, definition of.*

SEC. 56. Every person who shall forcibly steal, take, or arrest any man, woman, or child, whether white, black, or colored, in this state, and carry him or her into another country, state, or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this state, without having established a claim according to the laws of the United States, shall, upon conviction, be deemed guilty of kidnapping. Every person found guilty of kidnapping shall be confined in the penitentiary for a term not less than one year, and not more than seven years, for each person kidnapped, or attempted to be kidnapped. *Punishment.*

SEC. 57. Every person who shall hire, persuade, entice, decoy, or seduce by false promises, misrepresentations, and the like, any negro, mulatto, or colored person, not being a slave, to go out of this state, or to be taken or removed therefrom, for the purpose and with the intent to sell such negro, mulatto, or colored person into slavery, or involuntary servitude, or otherwise to employ him or her for his or her own use, or to the use of another, without the free will and consent of such negro, mulatto or colored person, any person so offending shall be deemed to have committed the crime of kidnapping, and upon conviction thereof, shall be punished as in the preceding section. *Kidnaping free negroes, &c.*

SIXTH DIVISION.

Crimes and offences against Habitations and other Buildings.

SEC. 58. Every person who shall wilfully and maliciously burn, or cause to be burned, any dwelling house, kitchen, office, shop, barn, stable, store-house, ware-house, malt-house, still-house, factory, mill, pottery, or other building, the property of any other person, or any church, meeting-house, school-house, state-house, court-house, work-house, jail or other public building, or any boat, or other water-craft, or any bridge of the value of fifty dollars, erected across any of the waters of this state, such person, so offending, shall be deemed guilty of arson, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for a term not less than one year, nor more than ten years; and should the life or lives of any person or persons be lost in consequence of any such burning as aforesaid, such offender shall be deemed guilty of murder, and shall be indicted and punished accordingly. *Arson.*

SEC. 59. Every person who shall wilfully and maliciously set fire to any of the buildings or other property described in the foregoing section, with intent to burn or destroy the same, shall be deemed guilty of a high misdemeanor, and upon conviction thereof, shall be imprisoned in the penitentiary for a term not exceeding two years, and be fined in a sum not exceeding five hundred dollars. *Punishment.*

SEC. 60. Every person who shall, in the night time, wilfully

Burglary. and maliciously and forcibly, break and enter, or wilfully and maliciously without force, (the doors or windows being open,) enter into any dwelling house, kitchen, office, shop, store-house, warehouse, malt-house, still-house, mill, pottery, factory, water-craft, church, or meeting-house, with intent to commit murder, robbery, rape, mayhem, larceny, or other felony, shall be deemed guilty of burglary, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year, nor more than ten years.

Punishment.

SEVENTH DIVISION.

Crimes and Offences relative to property.

Robbery, definition of. SEC. 61. Robbery is the felonious and violent taking of money, goods, or other valuable thing, from the person of another, by force or intimidation. Every person guilty of robbery shall be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years.

Punishment.

Larceny, definition of. SEC. 62. Larceny is the felonious stealing, taking and carrying, leading, riding, or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money or other personal property, or those means, or muniments by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the day time, shall be deemed larceny: Larceny may be also committed by feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny, shall be punished by confinement in the penitentiary, for a term not less than one year, and not more than ten years.

Punishment.

Person receiving stolen goods. SEC. 63. Every person who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or any thing, the stealing of which is declared to be larceny, or property, obtained by robbery, or burglary, knowing the same to have been so obtained, shall, upon conviction, be punished by confinement in the penitentiary, for any term not less than one year, nor more than ten years, and every such person may be tried, convicted, and punished as well before, as after the trial of the principal. No person convicted of larceny, or of buying or receiving goods or other things obtained by larceny, burglary, or robbery, shall be condemned to the penitentiary, unless the money or the value of the thing stolen, bought, or received, shall amount to five dollars.

Punishment.

Property obtained by larceny to be restored to the owner. SEC. 64. All property obtained by larceny, robbery, or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser, or not, shall divest the owner of his right to such property. Such owner may maintain his action not only against the felon, but against any person in whose possession he may find the same.

Altering, or defacing marks on brands. SEC. 65. Every person who shall mark or brand, alter or deface the mark or brand of any horse, mare, colt, jack, jennett, mule, or any one or more head of neat cattle, or sheep, goat, hog,

shoat, or pig, not his or her own property, but belonging to some other person, with intent thereby to steal the same, or to prevent identification thereof by the true owner, shall, on conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than three years: *Provided*, That no person shall be condemned to the penitentiary, under this section, unless the value of the property affected shall amount to five dollars. And in case the value of the property affected by the offences herein described, or by larceny, or by buying or receiving goods or other property obtained by larceny, robbery or burglary shall not amount to five dollars, then the offender shall be punished by imprisonment in the county jail, for a term not exceeding three months, and fined not exceeding fifty dollars.

Punishment.
Proviso.

SEC. 66. Every servant, officer, or person employed in any public department, station, or office of the government of this state, or any county of this state, or in any office of a corporate body, who shall embezzle, steal, secrete, or fraudulently take and carry away any money, goods, chattels, effects, book or books of record, or of account, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money or property, of whatever description it may be, being the property of said state, county, or corporate body, shall, on conviction, be punished by confinement in the penitentiary, for a term not less than one year, nor more than ten years.

Officers embezzling money.
Punishment.

SEC. 67. If any officer or person who now is, or hereafter may be entrusted by law to collect, disburse, receive, or safely keep, any money or moneys, revenue or revenues, belonging to this state, to the school fund of this state, to the school fund of any county or township, to any county in this state, to any canal, turnpike, or rail-road fund of this state, or any county thereof, or to the president and directors of the state bank, or to any fund for the improvement of any public road, river, creek, or other water course, bordering on or within this state, or to any other fund, now in being, or hereafter to be established by law, for public purposes, and who shall fail or refuse to pay over all moneys, warrants, bills, notes, and orders which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive, or shall receive for safe keeping, belonging to this state, to any county of this state, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such moneys, warrants, bills, notes, or orders, ought by law to be paid over, or his or their attorney, or agent duly authorized in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years: *Provided*, That no person shall be committed to the penitentiary under this section, unless the money not paid over shall amount to one hundred dollars, if it appear that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section, shall forever

Failing and refusing to pay over moneys, &c.
Punishment.
Proviso.
Persons convicted under this.

section disqualified from holding office. *Fraudulently and maliciously destroying papers, &c.* thereafter be ineligible and disqualified from holding any office of honor or profit in this state.

Punishment. SEC. 68. Every person who shall fraudulently or maliciously tear, burn, efface, cut, or in any other way destroy any deed, lease, bond, will, or any other writing sealed, or any bank bill or note, check, warrant for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this state, or of the United States, or any of them, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit, or other demand, or any transfer, or assurance of money, stock, goods, chattels, or other property, or any letter of attorney or other power, or any day-book, or other book of account, or any agreement, or contract whatsoever, with intent to defraud, prejudice, or injure any person, or body corporate, shall, upon conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than five years.

Removing land marks. SEC. 69. Every person who shall knowingly, maliciously, and fraudulently, cut, fell, alter, or remove any certain boundary tree, or other allowed land mark, to the wrong of his neighbor, or any other person, shall, on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail for a term not exceeding three months.

Punishment. SEC. 70. If any clerk, apprentice, or servant, whether bound or hired, to whom any money, bank bill, or note, or goods, or chattels shall be entrusted or delivered by his or her master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank bill, or note, or goods, or chattels, or any part thereof, with intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed by his or her said master or mistress, or being in the service of his or her said master or mistress, shall embezzle the said money, bank bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use, with like purpose to steal the same, every such person so offending shall be deemed guilty of larceny, and be punished accordingly.

Clerks or apprentices secreting property with intent to defraud or steal. SEC. 71. If any bailee of any money, bank bill, or note, or goods, or chattels, shall convert the same to his or her own use, with an intent to steal the same, he shall be deemed guilty of larceny in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

Deemed guilty of larceny. SEC. 72. If any lodger shall take away with intent to steal, embezzle, or purloin, any bedding, furniture, goods, or chattels, which he or she is to use, in, or with his or her lodging, he or she shall be deemed guilty of larceny, and on conviction, shall be punished accordingly.

EIGHTH DIVISION.

Forgery and Counterfeiting.

Bailee converting property to his own use Deemed guilty of larceny. SEC. 73. Every person who shall falsely make, alter, forge, or counterfeit any record, or other authentic matter of a public nature,

or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order, or any accountable receipt, or any order, or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt, for money, or goods, or any acquittance, release, or discharge for any debt, account, action, suit, demand, or other thing real or personal, or any transfer or assurance of money, stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer stock, or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or endorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note, for money or other property, or shall counterfeit or forge the seal or hand writing of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate reside in, or belong to, this state or not; or shall utter, publish, pass, or attempt to pass as true and genuine, or cause to be uttered, published, passed, or attempted to be passed as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person or persons, body politic or corporate, whether the said person or persons, body corporate and politic reside in this state or not; every person so offending, shall be deemed guilty of forgery, and upon conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years.

Punishment. SEC. 74. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this state, or shall pass or give in payment, or offer to pass or give in payment such counterfeited coin, or permit, cause, or procure the same to be altered or passed, with intention to defraud any person, body politic or corporate, knowing the same to be counterfeited, shall be deemed guilty of counterfeiting, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years.

Counterfeiting. SEC. 75. Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins, of the species now current, or hereafter to be current in this state, with intention to utter or pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by confinement in the penitentiary not less than one, nor more than fourteen years.

Punishment.

Counterfeiting.

Punishment.

Persons having in possession counterfeit money of gold or silver coin with intent to utter.

Punishment.

SEC. 76. Every person who shall have in his or her possession, or shall receive from any other person, any forged promissory note or notes, or bank bill or bills, for the payment of money with intention to utter or pass the same, or to permit, cause, or procure the same to be uttered or passed, with intention to defraud any person or persons, body corporate or politic, whether such person or persons, body corporate or politic, reside in, or belong to this state or not, knowing the same to be forged or counterfeited, or shall have or keep in his possession any blank or unfinished note or bank bill, made in the form or similitude of any promissory note, or bill for payment of money made to be issued by any incorporated bank, or banking company in this state or elsewhere, with intention to fill up and complete such blank and unfinished note or bill, or to permit or cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause or procure the same to be uttered or passed, to defraud any person or persons, body politic or corporate, whether in this state or elsewhere, shall, upon conviction thereof, be punished by confinement in the penitentiary, for a term not less than one year, nor more than fourteen years.

Punishment.

SEC. 77. Every person who shall make, pass, utter, or publish, with an intention to defraud any other person or persons, body politic or corporate, either in this state or elsewhere, or with like intention shall attempt to pass, utter, or publish, or shall have in his or her possession with like intent to pass, utter, or publish any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument of writing for the payment of money or property of some bank, corporation, co-partnership, or individual, when in fact there shall be no such bank, corporation, co-partnership, or individual in existence, the said person knowing the said bill, note, check, or instrument of writing, for the payment of money or property to be fictitious, shall be deemed guilty of the crime of forgery, and on conviction thereof shall be punished by confinement in the penitentiary for a term not less than one, nor more than fourteen years.

Punishment.

SEC. 78. Every person who shall make, or knowingly have in his possession, any die, or dies, plate or plates, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting the coin now current or hereafter to be current in this state, or in counterfeiting bank notes, or bills, whether such bank be situate in this state or not, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years, and all such dies, plates, apparatus, paper, metal, machines, intended for the purposes aforesaid, shall be destroyed.

Punishment.

SEC. 79. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company, or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

SEC. 80. Persons of skill shall be competent witnesses to prove, that such bill or note is forged or counterfeited.

Persons having in possession counterfeited notes, &c. with intention to utter.

Persons of skill shall be competent to prove the forgery.

SEC. 81. Every person who shall fraudulently forge, deface, corrupt, or counterfeit the seal of this state, or the seal of any court, or public officer, by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully, and corruptly, or with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate, or other writing, or who shall have in his possession or custody, any such counterfeited seal, and shall wilfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by confinement in the penitentiary for a term not less than one, nor more than fourteen years.

Counterfeiting public seals.

Having in possession and concealing counterfeited seals. Punishment.

NINTH DIVISION.

Crimes and Offences against Public Justice.

SEC. 82. Every person having taken a lawful oath, or made affirmation in any judicial proceeding, or in any other matter where by law, an oath or affirmation is required, who shall swear or affirm wilfully, corruptly, and falsely, in a matter material to the issue, or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury, or subornation of perjury, (as the case may be,) and upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years.

Perjury.

Punishment.

When procuring the conviction and execution of an innocent person, it shall be deemed murder.

SEC. 83. Every person who, by wilful and corrupt perjury, or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof, shall suffer the punishment of death.

SEC. 84. In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of the record or proceedings, either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court or other authority before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same.

In indictments for it shall be sufficient to set forth the substance of the offence.

SEC. 85. If any person or persons shall directly or indirectly give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security, for the payment or delivery of any money, present, reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any judge or justice of the peace, acting within this state, or to corrupt, induce, or influence such judge or justice of the peace to be more favorable to one side than to the other, in any suit, matter or cause depending or to be brought before him or them, or shall directly or indirectly give any sum or sums of money, present, or

Bribery.

Of officers.

reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or other thing to obtain, procure, or influence the vote of any member of the general assembly, or to incline, induce, or influence, any such member of the general assembly to be more favorable to one side than the other, on any question, election, matter or thing pending, or to be brought before the general assembly, or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation, or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the general assembly, who shall in any wise accept or receive the same, shall be deemed guilty of bribery, and on conviction shall be punished by confinement in the penitentiary not less than one year, nor more than five years.

Punishment.

When given to procure an appointment to office, or to induce partiality or power.

SEC. 86. If any person shall directly or indirectly give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security for the payment of any money, present, or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, or state's attorney, member of the general assembly, or other officer, ministerial or judicial, (but such fees as are allowed by law,) with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested, or performed any duty of him required, with partiality or favor, or otherwise contrary to law, the person so giving, and the officer so receiving any money, bribe, present, reward, promise, contract, obligation, or security, with intent, or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and on conviction, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than five years.

Punishment.

Attempts to bribe.

SEC. 87. Every person who shall offer, or attempt to bribe any member of the general assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, state's attorney, or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections, and every member of the general assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, state's attorney, or other ministerial or judicial officer, who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be fined in a sum not exceeding five hundred dollars.

Officers embezzling records.

SEC. 88. If any judge, justice of the peace, sheriff, coroner, clerk, recorder, or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify, or avoid any record process, charter, gift, grant, conveyance, bond, or contract, or shall knowingly and wilfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture, or shall forge, deface, or falsify any document or instrument recorded, or any registry, acknowledgment, certificate, or shall alter, deface, or falsify

any minute, document, book, or any proceeding whatever, of, or belonging to any public office within this state, the person so offending and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than seven years.

SEC. 89. Every jailer who shall be guilty of wilful inhumanity or oppression, to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office. *Jailer when guilty of oppression.*

SEC. 90. If any officer, whose office shall be abolished by law, or who after the expiration of the time for which he may be appointed, or elected, or after he shall have resigned, or been legally removed from his office, shall wilfully and unlawfully withhold or detain from his successor, or other person entitled thereto by law, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilate, destroy, or take away the same, the person so offending shall, on conviction, be punished by confinement in the penitentiary for a term not exceeding one year, nor more than five years. The provisions of this section shall apply to any person or persons who shall have such records, documents, papers, or other writings, in his or her or their possession, and who shall wilfully mutilate, destroy, withhold, or detain the same as aforesaid. *Officer whose term of service has expired, refusing to deliver over to his successor the records of his office. Mutilating them. Punishment.*

SEC. 91. If any person shall, without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail, or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof, shall be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years. *Acknowledging or confessing any fine, power of attorney, &c. without lawful authority. Punishment.*

SEC. 92. If any person shall, knowingly and wilfully obstruct, resist, or oppose, any sheriff, deputy sheriff, coroner, constable, or other officer of this state, or other person duly authorized, in serving, or attempting to serve any lawful process or order of any court, judge, or justice of the peace, or any other legal process whatsoever, or shall assault or beat, any sheriff, deputy sheriff, coroner, constable, or other officer, or person duly authorized in serving or executing, or attempting to serve or execute any process or order aforesaid, or for having served or executed, or attempted to serve or execute the same, every person so offending shall be fined in any sum not exceeding five hundred dollars, and imprisoned for a term not exceeding one year: *Provided*, Any officer or person whatever that may or shall assault or beat any individual under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment. *Resisting an officer in the discharge of his duty. Punishment. Officer assaulting any person under color of his commission.*

SEC. 93. If any person or persons shall set at liberty, or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is death, such person on conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years, and if any person or persons shall set at liberty or rescue *Rescue after conviction.*

Punishment.

any person who shall have been found guilty, or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in custody of an officer, or in the penitentiary, the person so offending on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

Before conviction.

SEC. 94. If any person shall set at liberty or rescue any person who before conviction stands charged or committed for any capital offence, or any crime punishable by confinement in the penitentiary, such person so offending, shall be, on conviction, fined in a sum not exceeding one thousand dollars, and imprisoned in the penitentiary for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed, or convicted of any misdemeanor, or other offence punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty, if he or she had been found guilty.

Punishment.

Warden or officers of the penitentiary suffering the escape of any convict.

SEC. 95. If the warden of the penitentiary, or any servant, officer or agent, belonging to, or in employment at the same, or any sheriff, deputy sheriff, or jailer, or any person employed by them as a guard, shall fraudulently contrive, procure, aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, or in said penitentiary committed, every such person on conviction shall be punished by confinement in said penitentiary, to solitary confinement, in the penitentiary, for a term not exceeding three months, and by confinement to hard labor, for a term not exceeding ten years.

Punishment.

Suffering persons sentenced to solitary confinement to be at large.

SEC. 96. If the warden of the penitentiary, or other person as aforesaid, shall negligently suffer any convict committed or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to such convict, or to be there visited, conversed with, comforted, or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary, under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations thereof, to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by fine not exceeding two hundred dollars.

Punishment.

Persons assisting any convict in the penitentiary to effect his escape.

SEC. 97. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary, or other place where such convict may be confined, any tool, weapon, or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, and imprisonment in the penitentiary not exceeding six months.

Punishment.

Rescue from civil process.

SEC. 98. If any person or persons shall rescue another in legal custody, on civil process, such person or persons shall, on conviction, be fined in any sum not exceeding the sum for which said civil process issued.

SEC. 99. If any person shall aid or assist a prisoner lawfully committed or detained in any jail for any offence against this state, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from jail, though no escape be actually made, or if any person shall convey, or cause to be delivered to such prisoner any disguise, instrument, or arms, proper to facilitate the escape of such prisoner, any person so offending, (altho' no escape or attempt to escape be actually made,) shall, on conviction, be punished by fine, not exceeding five hundred dollars, and imprisonment in the county jail, for a term not exceeding one year.

Assisting prisoner confined in jail to escape. Though no escape be made.

Punishment.

SEC. 100. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue or attempt to rescue any prisoner from the custody of any sheriff, deputy sheriff, coroner, constable, officer, or other person, who shall have the lawful custody of such prisoner, every person so offending shall, upon conviction thereof, be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year.

Aiding in an attempt to escape.

SEC. 101. If any sheriff, coroner, jailer, keeper of a prison, constable, or other officer, or person whatever having any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned in the county jail for any term not exceeding six months: *Provided*, That if such prisoner be in custody charged with murder or other capital offence, then such officer or person suffering or permitting such escape, shall be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years. A negligent escape of a person, charged with a criminal offence, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine, not exceeding five hundred dollars.

Officer suffering prisoner to escape before conviction.

Punishment.

Provided.

Negligent escape before conviction.

SEC. 102. If any sheriff, coroner, keeper of a jail, constable, or other officer, shall wilfully refuse to receive or arrest any person charged with a criminal offence, then such sheriff, coroner, jailer, constable or other officer shall, on conviction, be fined not exceeding five hundred dollars, and imprisoned not exceeding six months in the common jail.

Officer refusing to arrest a person charged with a criminal offence.

SEC. 103. If any person shall take money, goods, chattels, lands, or other reward, or promise thereof, to compound any criminal offence, such person or persons shall be fined in double the sum or value of the thing agreed for, or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offence.

Compounding any criminal offence.

SEC. 104. If any two or more persons shall conspire or agree, falsely and maliciously to charge, or indict, or cause or procure to be charged or indicted, any person for any criminal offence, each of the persons so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

Conspiracy.

Punishment.

SEC. 105. If any person shall take upon himself to exercise or officiate in any office, or place of authority in this state, without

Persons intruding in-

to office. being lawfully authorized thereto, he shall, upon conviction, be fined in any sum not exceeding two hundred dollars.

Embracery, definition of. SEC. 106. Embracery is an attempt to influence a juror or jurors corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, entertainments, and the like. Every embracer who shall procure any juror to take money, gain, or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding one year. And any juror convicted of taking money, gain, or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as a juror. This section shall apply as well to the grand, as the petit jurors.

Punishment. SEC. 107. If any person or persons shall wickedly and wilfully excite and stir up any suits or quarrels between the people of this state, either at law or otherwise, with a view to promote strife and contention, every such person so offending shall be deemed to have committed the crime of *Common Barratry*, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars; and if he be an attorney or counsellor at law, he shall be suspended from the practice for any time not exceeding six months.

Common barratry. SEC. 108. If any person shall officiously intermeddle in any suit at common law or in chancery, that in no wise belongs to, or concerns such person, by maintaining or assisting either party with money, or otherwise to prosecute or defend such suit, with a view to promote litigation, every such person so offending shall be deemed to have committed the crime of *maintenance*, and, upon conviction thereof, shall be fined and punished as in cases of *Common Barratry*: *Provided*, That it shall not be considered maintenance for a man to maintain the suit of his kinsman or servant, or poor neighbor out of charity.

Punishment. SEC. 109. If any judge, justice of the peace, sheriff, coroner, constable, clerk, or other officer of this state, ministerial or judicial, shall wilfully or corruptly receive or take any fee or reward to execute or do his duty as such officer, except such as is, or shall be allowed by law, or if any such officer shall wilfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law, every such officer so offending shall be deemed guilty of extortion, and on conviction thereof, shall be fined in any sum not exceeding two hundred dollars.

Extortion. SEC. 110. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor, attorney general, or state's attorney, who shall be guilty of any palpable omission of duty, or who shall wilfully and corruptly be guilty of oppression, malfeasance, or partiality in the discharge of his official duties, shall, upon conviction thereof, be fined in a sum not exceeding two hundred dollars, and the court shall have power, upon the recommendation of the jury, to add to the judgment of the court, that any officer so convicted shall be removed from office. The court shall have power whenever any clerk of

the circuit court, attorney general, or state's attorney, shall be presented or indicted, to appoint for that occasion, a prosecuting attorney, or clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of clerk, or attorney general, or state's attorney. It shall be the duty of the court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

In the prosecution of a clerk, attorney general, or state's attorney, the court may appoint for that occasion a person to fill the office.
SEC. 111. If any person shall, knowingly, send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattles, or other valuable things, or threatening to maim, wound, kill, or murder, or to burn or destroy his or her house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his or her infirmities or failings, though no money, goods, chattles, or valuable thing be demanded, such persons so offending, shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding six months.

TENTH DIVISION.

Offences against the public Peace and Tranquility.

SEC. 112. If any person, at late and unusual hours of the night maliciously or wilfully disturb the peace or quiet of any neighborhood or family, by loud or unusual noises, or by tumultuous and offensive carriage, threatening, traducing, quarreling, challenging to fight, or fighting; every person convicted thereof shall be fined in a sum not exceeding fifty dollars, or imprisoned not exceeding two months.

Disturbing of the peace.
SEC. 113. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice of the peace, sheriff, coroner, constable or other public officer—persons so offending, shall, on conviction, be severally fined in any sum not exceeding fifty dollars, and imprisoned not exceeding one month.

Persons assembling to disturb the peace, and not dispersing on being commanded.
SEC. 114. If two or more persons shall, by agreement, fight in a public place, to the terror of the citizens of this state, the person so offending shall be deemed guilty of an affray.

Affray.
SEC. 115. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, be severally fined in a sum not exceeding fifty dollars, or imprisoned not exceeding three months.

Unlawful assemblage.
SEC. 116. If two or more persons shall meet to do an unlawful act, upon a common cause of quarrel, and make advances towards it, they shall be deemed guilty of a rout, and on conviction, shall be severally fined in a sum not exceeding seventy dollars, or imprisoned not exceeding four months.

Rout.

Riot. SEC. 117. If two or more persons actually do an unlawful act with force or violence against the person or property of another, with or without a common cause of quarrel, or even to do a lawful act, in a violent and tumultuous manner, the persons so offending shall be deemed guilty of a riot, and on conviction shall severally be fined not exceeding two hundred dollars, or imprisoned not exceeding six months.

Officers knowing of the intention on the part of any two individuals to fight and not using their authority to prevent the same. SEC. 118. If any judge, justice of the peace, sheriff, or other officer, bound to preserve the public peace, shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined not exceeding one hundred dollars.

Libel. SEC. 119. If any person or persons shall, in any newspaper or hand bill, written or printed, publish or proclaim any other person or persons as a coward or cowards, or use any other opprobrious or abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, such person or persons so offending, on conviction, shall be fined in a sum not exceeding five hundred dollars, or imprisoned for a term not exceeding three months. The publisher or printer of any such newspaper, hand bill, or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such hand bill or publication; and if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment, or either: *Provided, however,* That the testimony given by any such witness shall, in no case, be used in any prosecution against such witness.

Definition of a libel. SEC. 120. A libel is a malicious defamation, expressed either by printing or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt, or ridicule: Every person, whether writer or publisher, convicted of this offence, shall be fined in a sum not exceeding five hundred dollars, or imprisoned not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

Punishment.

Truth, when may be given in evidence.

ELEVENTH DIVISION.

Offences against the public Morality, Health, and Police.

Bigamy, definition of. SEC. 121. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this state, being married, or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive; the person so offending shall, on conviction thereof, be punished by a fine not exceeding one thousand dollars, and im-

Punishment.

prisoned in the penitentiary not exceeding two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record evidence; but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when such second marriage shall have taken place without this state, cohabitation in this state after such second marriage shall be deemed the commission of the crime of bigamy, and the trial in such case may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons for the space of five years together, prior to the said second marriage, and he or she not knowing such husband or wife to be living within that time. Also nothing herein contained shall extend to any person that is or shall be at the time of such second marriage divorced by lawful authority from the bands of such former marriage, or to any person where the former marriage hath been by lawful authority declared void.

This section not to extend to persons whose husband or wife shall have been absent for the space of five years; Nor to persons divorced from the first marriage.

SEC. 122. If any man or woman being unmarried, shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not more than five hundred dollars, or imprisoned not more than one year.

Single persons marrying the husband or wife of another.

SEC. 123. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, and on conviction, shall be fined in any sum not exceeding two hundred dollars each, or imprisoned not exceeding six months. This offence shall be sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offence, such man or woman shall be severally punished twice as much as the former punishment, and for the third offence, treble, and thus increasing the punishment for each succeeding offence: *Provided, however,* That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution by their intermarriage, if such marriage can be legally solemnized, and upon the payment of the costs of such prosecution.

Adultery and fornication.

How proved. Proviso.

SEC. 124. If any person shall hereafter bring or cause to be brought or imported into this state for sale, or shall sell, or offer to sell, any pack or packs of playing cards, or any dice, billiard table, billiard balls, or any other device or thing invented or made for the purpose of being used at any game, or any obscene book, pamphlet, or print, every such person shall, on conviction, be fined in a sum not less than twenty-five dollars, nor more than fifty dollars.

Persons selling cards, &c. for the purpose of gaming.

Punishment.

SEC. 125. If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling house on the Sabbath day or night, or shall maintain or keep a lewd house, or place for the practice of fornication, or shall keep a common ill-governed and disorderly house to the encouragement of idleness, gaming, drinking, fornication, or other misbehaviour, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

Persons guilty of lewdness or public indecency.

Punishment.

Persons keeping gaming houses.

SEC. 126. If any person shall, by himself, herself, servant, or other agent, for his or her gain, or profit, keep, have, exercise, or maintain a common gaming house, table, or room, or in any house or place occupied by him or her, procure or permit any persons to frequent, or come together to play for money, or other valuable thing, at any game, every offender, on conviction, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding six months.

Punishment.

Playing at cards, &c.

SEC. 127. If any person or persons shall play for money, or other valuable thing, at any game with cards, dice, checks, or at billiards, or with any other article or instrument, thing or things whatsoever, which may be used for the purpose of playing or betting, upon, or winning or losing money, or any other thing or things, article or articles of value, or shall bet on any game others may be playing, every person so offending shall be fined not exceeding one hundred dollars, and not less than ten dollars.

Punishment.

Tavern keepers permitting gaming in their taverns.

SEC. 128. Every tavern keeper who shall suffer or permit any game or games, prohibited or intended to be prohibited by this act, to be played in his tavern, or in any out house appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed as a tavern keeper for one year from such conviction. It shall be the duty of all justices

Punishment.

Duty of officer to give information of all offences against this act.

of the peace, sheriffs, coroners, and grand jurors, now in office, or hereafter to be appointed, to take notice, and give information to the proper authorities, of all such offences as may be committed in their respective counties, contrary to the provisions of this act, whenever the same may in any wise come under their immediate observation.

If officer shall neglect or refuse so to do.

And if any officer, whose duty it is made to execute the provisions of this act, shall neglect to enforce its provisions upon view, or complaint, such officer, upon conviction thereof, shall be fined in the sum of one hundred dollars, and shall moreover be suspended from office for one year.

Persons not having a legal license to keep tavern

SEC. 129. Every person who shall not have a legal license to keep a tavern, who shall barter, exchange, or sell any wine, rum, brandy, gin, whiskey, or other vinous, spiritous, or mixed liquors, to any person or persons, by a less quantity than one quart, shall, on conviction, be fined for every offence ten dollars.

Tavern keepers selling liquor to slaves or servants.

SEC. 130. Every tavern keeper, or other retailer of spiritous liquors, who shall barter, sell, or exchange, any wine, rum, gin, brandy, whiskey, or other spiritous liquors, to any black or mulatto servant or slave, without the consent of the master or mistress of such servant or slave, and every person, whether a tavern keeper or not, who shall sell, barter, or exchange any wine, rum, gin, brandy, whiskey, or other spiritous or mixed liquors, to any Indian or Indians in this state, shall, on conviction, be fined in the sum of ten dollars for each offence.

Punishment.

Persons obstructing public roads

SEC. 131. If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway, or common street, or alley, of any town or village, or any public bridge or causeway, or public river or stream, declared navigable by law, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufacture, or business, or continue the

same after it has been erected or established, or shall in any wise pollute or obstruct any water course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village, or neighborhood thereabouts; every person so offending shall, upon conviction thereof, be fined not exceeding one hundred dollars. And every such nuisance may, by order of the circuit court, before whom the conviction may take place, be removed, and abated by the sheriff of the proper county; and any inquest and judgment thereon, had under the provisions of any law authorizing a writ of *ad quod damnum*, shall be no bar to a prosecution under this act.

Punishment. Nuisances to be abated

SEC. 132. If any person or persons shall, knowingly, sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink, or liquors, every person so offending, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding three months.

Persons selling unwholesome provisions, &c.

SEC. 133. If any person, number of persons, or corporation in this state, without special leave from the general assembly, shall emit or utter any bill of credit, make, sign, draw, or endorse, any bond, promissory note, or writing, bill of exchange, or order to be used as a general circulating medium, as, and in lieu of money, or other currency, every such person or persons, or members of such corporation, assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding three hundred dollars, or be imprisoned not exceeding one year.

No person or corporation shall emit bills of credit without special authority of the legislature.

SEC. 134. If any person shall intentionally deface, obliterate, tear down, or destroy, in whole or in part, any copy or transcript, or extract from or of, any law of the United States, or of this state, or any proclamation, advertisement, or notification, set up at any place in this state, by authority of any law of the United States, or of this state, or by order of any court, such person, on conviction, shall be fined in a sum not exceeding fifty dollars, nor less than five dollars, or imprisoned for a term not exceeding one month: *Provided*, That this section shall not extend to defacing, tearing down, obliterating, or destroying any law, proclamation, publication, advertisement, or notification, after the time for which the same was by law to remain set up shall have expired.

Defacing notices.

Punishment. Proviso.

SEC. 135. Any person able to work and support himself in some honest and respectable calling, not having wherewithal to maintain himself, who shall be found loitering, strolling about, frequenting of public places where liquor is sold, begging, or leading an idle, immoral, or profligate course of life, shall be liable to be indicted or arrested, on the complaint, under oath of any resident citizen of the county, and carried before any two justices of the peace, who shall examine said accused person, and hear the testimony in relation thereto; and if they shall be satisfied that he is a vagrant, as above set forth, the fact having been established by a jury, which shall in all such cases be summoned, and sworn to inquire the truth thereof, whether the person be a vagrant or not, shall make out a warrant, under their hands and seals, authorizing and requiring the officer having him in charge or custody, to hire out such vagrant within twenty-four hours to the best bidder, by public outcry, or

Vagrants.

Shall be hired out.

on a notice given, as they shall direct, for the highest price that can be had, for any term not exceeding four months: and such vagrant shall be subject to, and governed by, all the provisions of the act regulating apprentices, during the time for which he has been so hired. The money received for his hire shall, after deducting the costs, be, if he be without a family, paid into the county treasury; but if he have a family, the same shall be appropriated for their use and benefit: *Provided*, That any such vagrant, when arrested, and before judgment, may release himself by giving to said justices a bond, with good security, conditioned that he will for the next twelve months be of good behaviour, and betake himself to some honest employment for support, and that he shall not, or his family, become a county charge, through, or by reason of his idleness, immorality, or profligacy.

Persons having in possession any instrument or tools, with intent to break into any dwelling house. Shall be deemed vagrants. Having weapons with intent to assault. Punishment.

Persons refusing to join posse comitatus.

Punishment.

Disinter-ring the dead.

Punishment.

This section not to ex-

SEC. 136. If any person shall be found, having upon him or her, any pick-lock, crow, key, bit, or other instrument, or tool, with intent feloniously to break and enter into any dwelling house, store, warehouse, shop, or other building, containing valuable property, or shall be found in any of the aforesaid buildings, with intent to steal any goods and chattels; every such person so offending shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary, for any term not exceeding two years. And if any person shall have upon him any pistol, gun, knife, dirk, bludgeon, or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in a sum not exceeding one hundred dollars, or imprisoned not exceeding three months.

SEC. 137. Every male person above eighteen years of age who shall neglect or refuse to join the *posse comitatus*, or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons against whom there may have issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons, who after having been arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offence, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice shall, upon conviction, be fined in a sum not less than ten dollars, nor more than fifty dollars.

SEC. 138. If any person or persons shall open the grave or tomb where the body or bodies of any deceased person or persons shall have been deposited, and shall remove the body or bodies, or remains of any deceased person or persons from the grave or place of sepulture, for the purpose of dissection, or any surgical, or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel, or procure the same to be done, every such person or persons so offending, shall, on conviction, be fined not less than one hundred dollars, nor more than five hundred dollars: *Provided*, That this section shall not extend to the dissection of any criminal where the same shall be directed

to be delivered up for that purpose, by competent authority; and *tend to the dissection of any criminal.* *Provided*, also, That this section shall not be construed to prevent any person from removing the body or bodies of their deceased relations, or intimate friends, to any other place of sepulture that he or she may think proper.

SEC. 139. If any person, being an elector, shall vote more than once at any election, which may be held by virtue of any law of this state, he shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars. *Voting more than once at any election.*

SEC. 140. If any person shall, by bribery, menace, treating, or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this state in giving his vote at any election, every person so offending, and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be disqualified from voting at any election in this state for five years. *Bribery of persons voting. Punishment.*

TWELFTH DIVISION.

Offences committed by Cheats, Swindlers, and other Fraudulent persons.

SEC. 141. All, and every person who shall be a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract, or conveyance had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being parties as aforesaid, at any time shall wittingly and willingly put in, use, avow, maintain, justify, or defend the same, or any of them as true, and done, had, or made in good faith, or upon good consideration, or shall sell, alien, or assign any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him, her, or them, conveyed as aforesaid, or any part thereof, he, she, or they so offending, shall, on conviction, be fined not exceeding one thousand dollars. *Fraudulent conveyances, &c.*

SEC. 142. If any person, by false representations of his own respectability, wealth, or mercantile correspondence and connexions, shall obtain a credit thereby, defraud any person or persons of money, goods, chattels, or any valuable thing, or if any person shall cause or procure others to report falsely of his honesty, wealth, or mercantile character, and by thus imposing upon any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares, or merchandise, or any valuable thing, every such offender shall be deemed a swindler, and on conviction shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned not exceeding six months. *Swindlers. Punishment.*

SEC. 143. If any person or persons shall, knowingly and designedly, by any false pretence or pretences, obtain from any other person or persons any *choses* in action, money, goods, wares, chattels, effects, or other valuable thing whatever, with intent to cheat

or defraud any such person or persons of the same, every person so offending shall be deemed a *cheat*, and upon conviction shall be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year, and shall be sentenced to restore the property so fraudulently obtained, if it can be done.

Punishment.

Fraudulently selling lands a second time which have been once sold.

Punishment.

Common cheats.

Punishment.

SEC. 144. Any person or persons after once selling, bartering, or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, who shall again knowingly and fraudulently sell, barter, or dispose of the same tract or tracts of land, or town lot or lots, or any parts thereof, or shall knowingly and fraudulently execute any bond, or agreement to sell, or barter, or dispose of the same land, or lot or lots, or any part thereof, to any other person or persons, for a valuable consideration, every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than ten years.

SEC. 145. If any person shall knowingly sell by false weights or measures, or shall knowingly use false measures, at any mill, in taking toll for grinding corn, wheat, rye, or other grain, he or she shall be deemed a *common cheat*, and on conviction, shall be fined not less than two hundred dollars, and imprisoned not exceeding three months.

THIRTEENTH DIVISION.

Fraudulent and Malicious Mischief.

Destroying bridges, &c.

SEC. 146. If any person shall wilfully or maliciously cut down, break down, level, demolish, or otherwise destroy or damage any bridge, embankment, or mill-dam, or break or destroy the windows or doors of any dwelling-house or other house, or shall set fire to, or burn, or destroy, or procure or cause to be burnt or destroyed, any barrack, cock, crib, rick, or stack of hay, corn, wheat, oats, barley, or other grain of any kind, or shall cut down, girdle, or destroy any fruit tree or shade tree, or shall cut, pull down, or destroy any gate, post, railing, or fence, or shall pull down, burn, or destroy any pile or piles of wood, boards, or planks, or other lumber, or shall overturn any cart, wagon, or other carriage, or shall run them into sloughs, holes, or other places, or shall cut loose, or set adrift any canoe, ferry-flat, skiff, boat, or other vessel, for mischief, or shall unlawfully, wantonly, wilfully, or maliciously kill, wound, disfigure, or destroy any horse, mare, filly, colt, or gelding, or any bull, ox, steer, bullock, cow, heifer, or calf, or any sheep or lamb, or any hog, pig, or dog, or any other useful animal, being the property of another, every person so offending, on conviction, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding three months, or both.

Wantonly injuring or destroying cattle.

Punishment.

Destroying public jail.

SEC. 147. If any person shall wilfully and intentionally break down, pull down, or otherwise destroy, or injure, in whole or in part, any public jail, or other place of confinement, every person so offending, shall, upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of such jail or other place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act.

Punishment.

SEC. 148. If any person or persons shall, at any time hereafter, wilfully and intentionally, or negligently and carelessly, set on fire, or cause to be set on fire, any woods, prairies, or other grounds whatsoever in the inhabited parts of this state, every person so offending, shall, on conviction, be fined in any sum not less than five dollars, nor more than one hundred dollars: *Provided*, That this section shall not extend to any person who shall set on fire or cause to be set on fire, any woods or prairies adjoining his or her own farm, plantation, or enclosure, for the necessary preservation thereof from accident by fire, between the first day of March, and the last day of November, by giving to his or her neighbors two days notice of such intention: *Provided, also*, That this section shall not be construed, to take away any civil remedy, which any person may be entitled to, for any injury which may be done or received in consequence of such firing.

Persons setting on fire woods or prairies.

Punishment.

Proviso.

FOURTEENTH DIVISION.

Offences relative to Slaves, Indentured Servants, and Apprentices.

SEC. 149. If any person shall harbor or secrete any negro, mulatto, or person of color, the same being a slave or servant, owing service or labor to any other persons, whether they reside in this state, or any other state or territory, or district within the limits and under the jurisdiction of the United States, or shall in any wise hinder or prevent the lawful owner or owners of such slaves or servants from retaking them in a lawful manner, every such person so offending shall be deemed guilty of a misdemeanor, and fined not exceeding five hundred dollars, or imprisoned not exceeding six months.

Harboring or secreting slaves.

Punishment.

SEC. 150. If any person or persons, entitled to the service or labor of any negro, mulatto, or colored person, by indenture or other contract or registry made, or entered into under the laws of the late territory of Indiana or of Illinois, having a right to hold such person of color in temporary servitude by virtue of those laws and the constitution of this state, shall hire out, or send any such negro, mulatto, or colored person, or any of his or her children, to live or reside in any other state, territory, or country, or shall cause, procure, or suffer it to be done, or shall sell, or otherwise dispose of any such person of color, or the children of such, for the purposes aforesaid, to any citizen or resident of another state, territory, or country, before the expiration of his or her term of service, every person so offending, and all purchasers of such colored persons, so sold or removed, shall forfeit and lose all right and title, or claim to the service of such person of color, and shall, on conviction, for each offence, be fined, not exceeding five hundred dollars, one half to be applied to the use of the person injured, and the other half to the use of the county.

Taking them out of the state.

Punishment.

SEC. 151. If any keeper of a public house, or retailer of spirituous liquors, shall receive, harbor, entertain, or trust any minor or apprentice, within the age of twenty-one years, or any servant or slave, knowing them to be such, after having been cautioned or warned to the contrary, by the parent, guardian, master, or mis-

Keeper of public houses harboring or trusting minors or slaves.

trass of such minor, apprentice, servant, or slave, in the presence of one or more credible witnesses ; every such keeper of a public house, or retailer of spirituous liquors, as aforesaid, so offending, shall, upon conviction thereof, be fined in the sum of twelve dollars, and shall, moreover, forfeit his or her license.

Punishment.

FIFTEENTH DIVISION.

Construction of this Act, and duty of Courts.

Indictments, requisitions of.

SEC. 152. Every indictment or accusation of the grand jury, shall be deemed sufficiently technical and correct, which states the offence in the terms and language of this code, or so plainly that the nature of the offence may be easily understood by the jury. The commencement of the indictment shall be in substance as follows :

Form.

of the term of the circuit court, in the year of our Lord, 183 State of Illinois, } county, } ss.

The grand jurors chosen, selected, and sworn, in and for the county of in the name, and by the authority of the people of the state of Illinois, upon their oaths present, &c. (here insert the offence, and time and place of committing the same, with reasonable certainty.)

Exceptions which go merely to form, to be made before trial.

SEC. 153. All exceptions which go merely to the form of an indictment shall be made before trial, and no motion in arrest of judgment, or writ of error, shall be sustained, for any matter not affecting the real merits of the offence charged in such indictment. No indictment shall be quashed for want of the words "with force and arms," or of the occupation or place of residence of the accused, nor by reason of the disqualification of any grand juror or grand jurors.

Parties injured not barred from maintaining civil action.

SEC. 154. Nothing in this act contained shall be so construed as to prevent the party or parties injured from having and maintaining a civil action for all damages, and losses that he, she, or they may have sustained in consequence of the commission of any criminal offence herein punished ; and no court shall allow or entertain the plea that the private injury is merged in the crime, or in any manner affected thereby : Provided, however, The record of conviction shall not be used as evidence in any civil action, brought on any forged writing, or to recover the damages and losses sustained by the commission of any such criminal offence.

Record of conviction not to be used as evidence in any civil action.

Duties of the judges in relation to this code.

SEC. 155. It shall be, and is hereby declared to be the duty of the judges of the supreme and circuit courts to make a special report biennially to the legislature of all such defects, omissions, or imperfections in this code as experience may suggest.

The punishment of death shall be inflicted by hanging

SEC. 156. The manner of inflicting the punishment of death shall be by hanging the person convicted by the neck until death, at such time as the court shall direct, not less than fifteen, nor more than twenty-five days from the time sentence is pronounced, unless for good cause the court or governor may prolong the time.

Court may

SEC. 157. The court may order, on the application of any re-

spectable surgeon or surgeons, that the body of the convict shall, after death, be delivered to such surgeon or surgeons for dissection.

order the body of the criminal for dissection.

SEC. 158. This act shall extend to females committing any of the offences made punishable by this act, although they may not be expressly named ; but no white female shall be sentenced to stand in the pillory. In all cases where the punishment shall be by confinement in the penitentiary, the jury shall say in their verdict for what term the offender shall be confined ; and the court in pronouncing sentence, shall designate the portion of time such offender shall be confined to solitary imprisonment, and what portion to hard labor. Persons under the age of eighteen years shall not be punished by confinement to the penitentiary for any offence except robbery, burglary, or arson ; in all other cases where a penitentiary punishment is, or shall be provided, such person under the age of eighteen years, shall be punished by imprisonment in the county jail, for any term not exceeding eighteen months, at the discretion of the court.

This act to extend to females. Shall not be sentenced to stand in the pillory. The term of confinement in the penitentiary shall be determined by the jury in their verdict.

Offences herein defined to be punished according to the provisions of this act. Proviso.

SEC. 159. All offences herein defined shall be prosecuted and punished as by this act is prescribed, and not otherwise ; and all other offences may be punished by fine and imprisonment in the discretion of the court : Provided, The fine shall in no case exceed one hundred dollars, and the imprisonment six months.

SEC. 160. Whenever the punishment for any crime or misdemeanor is discretionary as to the extent or amount thereof, the court shall determine and affix the same, whether the punishment consist of corporeal punishment, imprisonment, or fine.

When the punishment is discretionary, the court shall determine its extent. Fine to be paid into the treasury of the county where the offence shall be tried.

SEC. 161. All fines imposed by virtue of any of the laws of this state, for the punishment of crimes and misdemeanors, shall, when collected, be paid into the treasury of the county where the offence shall be tried, for the use of such county, unless otherwise expressly directed : Provided, however, That nothing in this section contained shall be so construed as to found or constitute a cause of challenge or objection to any grand or petit juror.

SEC. 162. The benefit of clergy, appeals of felony, and trials by battle, shall be, and are hereby forever abolished.

Benefit of clergy, &c. abolished.

SEC. 163. The court shall have power in all cases of conviction under this act, when any fine is inflicted, to order, as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid, or otherwise legally discharged.

When any fine is inflicted, the court may order the party to jail until it is paid.

SEC. 164. Each and every person who may hereafter be convicted of the crime of rape, kidnapping, wilful and corrupt perjury, or subornation of perjury, arson, burglary, robbery, sodomy, or the crime against nature, larceny, forgery, counterfeiting, or bigamy, shall be deemed infamous, and shall forever thereafter be rendered incapable of holding any office of honor, trust, or profit, of voting at any election, of serving as a juror, and of giving testimony.

Persons when deemed infamous.

SIXTEENTH DIVISION.

Of Process, Indictment, Arraignment, Trial, Judgment, Execution, and Writ of Error.

Duty of court to fix the amount of bail.

SEC. 165. It shall be the duty of the circuit court, when any indictment shall be found as a true bill, to make an order, fixing the amount of bail to each offence bailable by law, to be endorsed on the process by the clerk and the sheriff, coroner, or other officer, who shall arrest the indicted person or persons, shall let such indicted person or persons to bail upon his, her, or their entering into a recognizance, with one or more securities, in the sum or sums specified on said process: which recognizance shall be made to the people of the state, conditioned for the appearance of the indicted person or persons, on the first day of the next circuit court, to be holden in and for such county, to answer the said indictment, and not depart the court without leave; which recognizance shall be signed by the persons entering into the same, and certified by the officer taking it. Every recognizance so taken, is hereby declared to be valid and binding, and shall not be set aside, or adjudged insufficient for want of form.

Recognizance.

Duty of clerks to issue capias

SEC. 166. It shall be the duty of the clerks of the circuit courts of each county of this state, to issue process of *capias* for the apprehension of all persons indicted in said courts respectively, to be directed to the sheriff, coroner, and constable, of the county where such indicted person or persons shall then be; and it shall be the duty of the sheriff, or in case of his absence or inability, of the coroner, or some one of the constables of the county, to which said *capias* is directed, to arrest the person or persons therein named, and to let him or them to bail, where the offence is bailable; or if the offence be not bailable, or not sufficient bail be offered, then the officer making the arrest shall bring his, her, or their bodies to the jail of the county where said *capias* is returnable, and deliver such accused person or persons, together with the *capias*, to the keeper of the jail, there to remain until discharged by due course of law. It shall also be the duty of any officer who shall take any recognizance in pursuance of this section, to return the same to the clerk by the first day of the court to which it may be returnable. It shall be lawful for any officer who has the custody of any prisoner or prisoners, by virtue of this section, to pass through any counties which lie in his route between the place of arrest and the county to which he is taking such prisoner or prisoners, and to lodge or deposit said prisoner or prisoners in any jail on his route, for safe custody, for one night or more, as occasion may require; and it is hereby made the duty of the county commissioner's court of the county where such indictment shall be

Officer having prisoner in custody may pass thro' any counties in his route.

Compensation of such officer to be paid by county commissioner's court.

found, to pay to the officer who shall bring any offender or offenders from another county, his reasonable charges for such service: *Provided*, That nothing contained in this or the preceding section shall prevent a *capias* from being issued without such endorsement, returnable instanter; which *capias* shall authorize and require the accused to be arrested, and immediately brought into court, when

he or she shall be either committed, bailed, or tried at the term at which the indictment shall be found.

SEC. 167. It shall be the duty of the clerks of the circuit courts to issue subpoenas, either on the part of the people, or of the accused, in any indictment directed as in the preceding section, to any county in this state. And every witness who shall be duly subpoenaed, and shall neglect or refuse to attend any circuit court, pursuant to the requisitions of such subpoena, shall be proceeded against and punished for contempt of the court. And attachments against witnesses who live in a different county from that where such subpoena is returnable, may be served in the same manner as *capiases* are directed to be served out of the county from which they issue, in the preceding section.

Duty of clerks to issue subpoenas.

Attachments against witnesses.

SEC. 168. It shall not be necessary to issue a *venire* in any criminal case. And in all criminal cases where the panel of jurors shall be exhausted by challenges or otherwise, and whether any juror has been elected and sworn or not, it shall be competent for the court to order on their minutes a *tales* for any number of jurors, not exceeding twenty-four, returnable instanter, out of which persons so ordered to be summoned, it shall be lawful to empanel a jury for the trial of any criminal case; but should the *tales* ordered be insufficient, by reason of challenges or otherwise, to form an impartial jury, the court may, from time to time, make such further orders on their minutes for additional *tales men*, returnable instanter, until a full jury shall be obtained.

Not necessary to issue a venire in any criminal case.

SEC. 169. No bill of indictment for false imprisonment, or wilful and malicious mischief, shall be found "a true bill" by any grand jury, unless a prosecutor is endorsed thereon by the foreman of the grand jury, with the consent of the prosecutor, except the same shall be found upon the information and knowledge of two or more of the grand jury, or upon the information of some public officer in the necessary discharge of his duty; in which case it shall be stated at the end of the indictment how the same is found, and then no prosecutor shall be required; but in cases where a prosecutor is endorsed on the indictment, and the defendant shall be acquitted on trial, the petit jury acquitting such defendant shall find, in addition to the verdict of "not guilty," whether the prosecutor had acted maliciously by instituting the prosecution or not; and whenever the petit jury shall return with a verdict of "not guilty," that the prosecutor had acted maliciously in the premises, the court shall enter judgment for costs against the prosecutor, including a fee of three dollars to the attorney general, or state's attorney, and award execution for the same, as is done in civil cases: *Provided*, That nothing herein contained shall render the prosecutor incompetent to be a witness, either before a grand or petit jury.

A prosecutor shall be endorsed on every bill of indictment

Jury shall find whether prosecutor has acted maliciously.

SEC. 170. Every person charged with treason, murder, or other felonious crime, shall be furnished, previous to his arraignment, with a copy of the indictment, and a list of the jurors and witnesses. In all other cases he or she shall, at his or her request, or the request of his or her counsel, be furnished with a copy of the indictment, and a list of the jurors and witnesses.

Accused shall be furnished with a copy of the indictment.

SEC. 171. Upon the arraignment of a prisoner, it shall be sufficient, without complying with any other form, to declare, orally,

Plea of not guilty may be made orally. by himself or his counsel, or his or her counsel, that he or she is not guilty; which declaration or plea shall be immediately entered upon the minutes of the court by the clerk, and the mention of the arraignment and such plea shall constitute the issue between the people of the state and the prisoner; and if the clerk should neglect to insert in the minutes the said arraignment and plea, it may and shall be done at any time by order of the court, and then the error or defect shall be cured.

When party stands mute. SEC. 172. In all cases where the party indicted shall, on being arraigned, obstinately stand mute, or refuse to plead, standing mute or refusing to plead, shall be adjudged and taken to be a denial of the facts charged in the indictment, and the court shall order the plea of "not guilty" to be entered on the minutes, and the trial, judgment, and execution, shall proceed in the same manner as it would have done if the party had pleaded "not guilty."

When party pleads guilty. SEC. 173. In all cases where the party indicted shall plead "guilty," such plea shall not be entered until the court shall have fully explained to the accused the consequences of entering such plea; after which, if the party indicted persist in pleading "guilty," such plea shall be received and recorded, and the court shall proceed to render judgment and execution thereon, as if he or she had been found guilty by a jury. In all cases where the court possess any discretion as to the extent of the punishment, it shall be the duty of the court to examine witnesses as to the aggravation and mitigation of the offence.

Challenge of jurors. SEC. 174. Every person arraigned for any crime punishable with death, shall be admitted on his trial, to a peremptory challenge of twenty jurors, and no more, and every person arraigned for any offence, that may be punished by imprisonment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of ten jurors; and in all other criminal trials, the defendant shall be allowed a peremptory challenge of six jurors. The attorney prosecuting on behalf of the people shall be admitted to a peremptory challenge of one half of the number of jurors that the accused is entitled to.

Jury de medietate linguae. SEC. 175. In no case shall the right to a trial by jury *de medietate linguae*, be allowed in criminal prosecutions.

When an offence is committed on the county line. SEC. 176. Where an offence shall be committed on a county line, the trial may be in either county divided by such line; and where any offence shall be committed against the person of another, and the person committing the offence shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of said counties.

Grand jury shall hear testimony on the part of the people only. SEC. 177. In all cases exhibited before the grand jury of any county, they shall hear the witnesses on behalf of the people only; and may find an indictment on the oath of one witness only, or upon the information of two of their own body, except in cases of treason or perjury, where, at least two witnesses to the same fact shall be necessary; and in finding a bill on indictment, at least sixteen of the grand jury shall be present, and at least twelve of them shall agree to the finding. The foreman of the grand jury may swear or affirm all witnesses that may come before the jury.

SEC. 178. All trials for criminal offences shall be conducted

according to the course of the common law, except when this act points out a different mode, and the rules of evidence of the common law, shall also, unless changed by this act, be binding upon all courts and juries in criminal cases. Juries in all cases shall be judges of the law and the fact.

SEC. 179. When the jury shall retire to consider of their verdict in any criminal case, a constable, or other officer, shall be sworn or affirmed to attend the jury to some private and convenient place, and to the best of his ability, keep them together without meat or drink, water excepted, unless by leave of the court, until they shall have agreed upon their verdict, nor suffer others to speak to them, and that when they shall have agreed on their verdict, he will return them into court: *Provided, however,* That in any cases of misdemeanor only, if the prosecutor for the people, and the person on trial, by himself or counsel, shall agree which agreement shall be entered upon the minutes of the court to dispense with the attendance of an officer upon the jury, or that the jury, when they have agreed upon their verdict, may write and seal the same, and after delivering the same to the clerk, may separate, it shall be lawful for the court to carry into effect any such agreement, and receive any such verdict, so delivered to the clerk, as the lawful verdict of any such jury.

SEC. 180. If any officer sworn to attend upon a jury, shall knowingly violate his oath or affirmation, or shall so negligently perform his duties, that the jury shall separate without leave of the court, or obtain food or drink, (except water,) or if any person not belonging to the jury, shall hold conversation with any of the jury, every person and officer so offending, shall be punished for a contempt of the court by fine and imprisonment, or both, in the discretion of the court.

SEC. 181. In all cases where any person or persons shall be convicted of any crimes or misdemeanors specified in this act, or of any offences at common law, the court shall give judgment that the offender or offenders so convicted shall pay the costs of the prosecution.

SEC. 182. The property, real and personal, of every person who shall be convicted of any of the offences punished by this act, shall be bound; and a *lien* is hereby created on the property, both real and personal, of every such offender, from the time of his or her arrest, if he or she be arrested before indictment, if not, then from the time of finding the indictment, at least so far as will be sufficient to pay the fine and costs of prosecution.—And it shall be the duty of the clerk of the circuit court, at the end of each term, to issue an execution for every fine which shall have been imposed during the term, and which remains unpaid, and for all costs of conviction in criminal cases, in which execution shall be stated, the day on which the arrest was made, or indictment found, as the case may be, which execution shall be delivered to the sheriff or coroner, and shall be by him levied on all the estate, real and personal, which the defendant or defendants possessed, as his or her own real or personal estate, on the day mentioned in such execution, and any property, real and personal, subsequently acquired by him or her; which property, so to be levied upon, shall be

advertised as in civil cases, and sold for what it will bring. It shall be no objection to the selling of any property under such execution, that the body is in custody for said fine and costs.

Party convicted may replevy the judgment for fine and costs by entering into recognizance.

SEC. 183. It shall and may be lawful for any person or persons, convicted of any criminal offence, to replevy the judgment for fine and costs, or the costs only, when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders entering into a recognizance before the circuit court, to the people of this state, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance, so taken, is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same, and upon the breach thereof, the clerk is hereby authorized to issue an execution against the goods and chattels, lands and tenements of the persons who entered into recognizance, in the same manner as if it had been a judgment of the court, which execution shall be collected in the same manner as is prescribed in the preceding section. No *scire facias* shall be necessary previous to issuing such execution. In all cases where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in this section, then no execution shall issue for said fine and costs, as is prescribed in the next preceding section; and further, such person or persons, after replevying the fine and costs, as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment in consequence of any conviction, unless where imprisonment is by this act made a part of the punishment; in that case, such convicted person or persons, shall be discharged from his or her, or their imprisonment, at the expiration thereof, if he, she, or they have replevied the fine and costs as aforesaid.

Scire facias not necessary before issuing execution on such recognizance.

Executions may be issued into any county of this state.

Persons may be discharged from imprisonment for fines and costs when unable to pay the same. Proviso.

In cases of bail.

SEC. 184. Executions for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be issued into any county in this state.

SEC. 185. Whenever it shall be made satisfactorily to appear to the circuit court, after all legal means have been exhausted, that any person who is confined in jail for any fine or costs of prosecution, for any criminal offence, hath no estate wherewith to pay such fine and costs, or costs only, it shall be the duty of the said court to discharge such person from further imprisonment for such fine and costs, which discharge shall operate as a complete release of such fine and costs: *Provided*, That nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment.

SEC. 186. In all cases of bail, for the appearance of any person or persons charged with any criminal offence, the security or securities of such person or persons may, at any time before judgment is rendered upon *scire facias*, to shew cause why execution should not issue against such security or securities, seize and surrender such person or persons, charged as aforesaid, to the sheriff of the county wherein the recognizance shall be taken; and it shall be the duty of such sheriff, on such surrender and the

delivery to him of a certified copy of the recognizance by which such security or securities are bound to take such person or persons, so charged as aforesaid, into custody, and by writing acknowledge such surrender, and thereupon the security or securities shall be discharged from any such recognizance, upon payment of all costs occasioned thereby.

SEC. 187. In the trial of any person or persons, for any crime or misdemeanor, it shall be the duty of the judge before whom such trial is pending, to sign and seal any bill of exception tendered to the court during the progress thereof: *Provided*, The truth of the case be fairly stated in such bill of exceptions; and thereupon the said exceptions shall, by the clerk of the said court, be entered in the record of such trial, and become, to all intents and purposes, a part thereof.

Duty of judge to sign bill of exceptions.

SEC. 188. The party aggrieved by manifest and material error, appearing of record, in any capital prosecution by indictment, may be relieved by writ of error, upon complying with the following terms, to wit: The party complaining that error has been committed, shall obtain a certified copy of the record from the clerk, and from the judge of the circuit court, or from the person who acted as prosecuting attorney on the trial, a certificate expressive of an opinion that said record contains a full and true history of the proceedings on said trial; which record, together with an assignment of the errors relied on for the reversal of the judgment, shall be presented to the supreme court, or to one of the justices thereof, in vacation; and if, after inspecting such transcript, the court or justice aforesaid, shall be of opinion that there is reasonable cause for allowing a writ of error, the same shall be granted by order endorsed on the back of said transcript. The allowance of such writ of error shall be sufficient authority to the clerk of the supreme court, to issue a supersedeas to stay the execution of the sentence of death, but not the discharge of the prisoner from jail. Where any judgment, the execution whereof has been stayed by writ of error, as aforesaid, shall be affirmed, the supreme court shall, by order, fix the time when the original sentence of death shall be executed, a copy of which order shall be sufficient authority to the sheriff for the execution of any prisoner therein mentioned, at the time specified.

Writ of error how to be obtained.

SEC. 189. Writs of error, in all criminal cases not capital, shall be considered as writs of right, and issue of course; but no writ of error shall be a supersedeas unless the supreme court, or one of the justices thereof, in vacation, after inspecting a copy of the record certified as in the preceding section, together with an assignment of the errors relied on for a reversal of the judgment, shall be of opinion that there is reasonable cause for allowing a writ of error, then the writ shall be granted by order endorsed on the back of such record, in which case the clerk of the supreme court shall issue a supersedeas, which shall have the effect to stay execution of the sentence, but not to discharge the prisoner from custody. If the party applying for such writ of error shall, at the time, be in custody under the authority of the judgment prayed to be superseded, and the said court or justice shall be of opinion that the party obtaining such writ of error ought to be bailed until the

Shall be considered as writs of right in all cases not capital when to be a supersedeas.

Prisoner may be bailed until the determination of the writ of error. determination of such writ of error, the said supreme court or justice may make an order to discharge such prisoner from custody, upon the prisoner's entering into a recognizance to the people of the state, before the sheriff of the county, where he or she shall be imprisoned, in such sum and with such security as said court or justice shall prescribe; which recognizance shall be conditioned, that the prisoner will appear at the next circuit court, to be holden in the county where the trial of such prisoner took place, and at each subsequent term of the circuit court on the first days, until the determination of such writ of error, and that he will be present and submit to such order as the supreme court shall make in the premises, and will not, at any of the terms of said court, in which he shall be bound to appear by said recognizance, depart the court without leave. The recognizance so taken, shall be returned to the next circuit court, and there entered of record, and such proceedings may be thereon had, in case of a breach of the condition of such recognizance, as shall be according to the course of the common law: *Provided, however,* That in cases where corporeal punishment is inflicted, the prisoner shall in no case be bailed upon the affirmance of any judgment brought into the supreme court by virtue of this section; the said court shall order and direct the circuit court to carry into effect the judgment of the court below. In case of affirmance, judgment shall be given for costs against the party prosecuting such writ of error, and execution shall issue thereupon from the supreme court.

Proviso.

SEVENTEENTH DIVISION.

*Limitations of Indictments and Penal Actions.**Limitation of indictments.*

SEC. 190. No person or persons shall be prosecuted, tried, or punished, for any offence denominated by the common law felony, (treason, murder, arson, and forgery excepted,) unless the indictment for the same shall be found by a grand jury, within three years next after the offence shall have been done or committed. Nor shall any person be prosecuted, tried, or punished, for any misdemeanor, or other indictable offence below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information, or action for the same shall be found or instituted within one year and six months from the time of committing the offence, or incurring the fine or forfeiture: *Provided,* That nothing herein contained shall extend to any person fleeing from justice: and *Provided, also,* That where any suit, information, or indictment, for any crime or misdemeanor, is limited by any statute, to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute. *Provided, also,* That where any indictment, information, or suit, shall be quashed, or the proceedings on the same set aside, or reversed, on writ of error, the time during the pendency of such indictment, information, or suit, so quashed, set aside, or reversed, shall not be reckoned within this statute, so as to bar any new indictment, information, or suit, for the same offence.

SEC. 191. The act entitled "An act relative to criminal juris- *Acts re-*
prudence," approved January 30, 1827, and all acts and parts of *pealed.*
acts in addition, or amendatory thereto, shall be, and are hereby repealed. *Provided, however,* That all indictments, recognizances, process, and proceedings, which shall be pending when this act takes effect, under, or by virtue of any law hereby repealed, shall be proceeded on to judgment and execution, in the same manner, and with the like effect, as if this act had not been passed. And all crimes, misdemeanors, and offences, which shall have been committed, or may be committed, before this act takes effect, and which are made punishable by any of the laws hereby repealed, shall be prosecuted and punished in the same manner as if this act had not been passed.

APPROVED, Feb. 26, 1833.

AN ACT to regulate the apprehension of offenders, and for other purposes. *In force after the first day of July, 1827*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly.* That the judges of the supreme court throughout the state, the judges of the circuit courts in their respective circuits, and justices of the peace in their respective counties, shall jointly and severally be conservators of the peace, within their respective jurisdictions, as herein designated, and shall have full power to enforce, or cause to be enforced, all laws that now exist, or that shall hereafter be made, for the prevention and punishment of offences, or for the preservation and observance of the peace. They shall have power to cause to be brought before them, or any of them, all persons who shall break the peace, and commit them to jail, or admit them to bail, as the case may require, and to cause to come before them, or any of them, all persons who shall threaten to break the peace, or shall use threats against any person within this state, concerning his or her body, or threaten to injure his or her property, or the property of any person whatever; and also all such persons as are not of good fame, and the said judge or justice of the peace, being satisfied, by the oath of one or more witnesses, of his or her bad character, or that he or she had used threats, as aforesaid, shall cause such person or persons to give good security for the peace, or for their good behavior towards all the people of this state, and particularly towards the individual threatened. If any person against whom such proceedings are had, shall fail to give a recognizance with sufficient security, it shall be the duty of the judge or justice of the peace before whom he or she shall be brought, to commit such person or persons to the jail of the proper county, until such security be given, or until the next term of the circuit court. Such judge or justice of the peace, shall also take recognizances for the appearance of all witnesses at such courts. All recognizances to be taken in pursuance of this section, shall be returnable at the next

*Who are conservators of the peace.**Their power.**May cause offenders to be arrested and committed.**And may bind them to keep the peace.**Or commit to jail until court.*

circuit court, to be holden in the proper county, where all such recognizances shall be renewed or dismissed, as the said circuit court shall, upon examination of the witnesses, deem to be just and right.

Which may discharge or admit to bail as the case may require.

And where the person or persons committed are in jail at the sitting of such circuit court, the court shall examine the witnesses, and either continue the imprisonment, bail the prisoner, or discharge him or her, as to the said court shall appear to be right, having due regard to the safety of the citizens of this state.

Hue and cry may be raised for the apprehension of felons.

SEC. 2. When any felonious offence shall be committed, public notice thereof shall be immediately given, in all public places near where the same was committed, and fresh pursuit shall be forthwith made after every person guilty thereof, by sheriffs, coroners, constables, and all other persons, who shall be by any of them commanded or summoned for that purpose: every such officer who shall not do his duty in the premises shall be punished by fine, in a sum not exceeding one hundred dollars, or imprisonment not exceeding three months.

Suspected persons how apprehended.

SEC. 3. It shall be lawful for any of the aforementioned judges or justices of the peace, upon oath or affirmation being made before him, that any person or persons have committed any criminal offence in this state, or that a criminal offence has been committed, and that the witness or witnesses have just and reasonable grounds to suspect that such person or persons have committed the same, to issue his warrant under his hand, commanding the officer, or person charged with the execution thereof, to arrest the person or persons so charged, and bring him, her or them before the officer issuing said warrant, or in case of his absence, before any other judge or justice of the peace, the said judge or justice of the peace, before whom any person shall be brought in pursuance of such warrant, or shall be brought without warrant, and charged with any criminal offence, before he shall commit such prisoner to jail, admit to bail, or discharge him or her from custody, shall inquire into the truth or probability of the charge exhibited against such prisoner or prisoners, by the oath of all witnesses attending; and shall, upon consideration of the facts and circumstances then proved, either commit such person or persons, so charged, to jail, admit him, her, or them to bail, or discharge him, her, or them from custody. No justice of the peace shall admit to bail any person or persons charged with treason, murder, or any offence punishable with death: and, provided, that in all cases where the charge is for sodomy, rape, arson, burglary, robbery, forgery, or counterfeiting, it shall be the duty of any justice of the peace, whenever any person or persons shall be brought before him, for the same or either of them, to associate with himself some neighboring justice of the peace previous to the examination of the witnesses, and they two shall have power to bail such prisoner or prisoners, or commit him, her, or them to jail, in case no good and sufficient bail is offered, or discharge the prisoner or prisoners, according to the proof that is adduced, and the law arising thereon. All recognizances taken in pursuance of this section shall require the accused to appear at, and on the first day of the next circuit court, or if the court be then sitting, on some day of the term, to be therein designated.

And to inquire into the truth of the charge.

SEC. 4. It shall be the duty of the judge or justice of the peace who shall commit any offender to jail as aforesaid, or admit him to bail, to bind by recognizance the prosecutor, and all such as do declare any thing material, to prove the offence charged, to appear before the next circuit court, on the first day thereof, or if the said court shall be then sitting, on some day to be therein designated, (and in all cases at the same time and place as the person or persons accused by said witnesses shall be bound to appear,) to give evidence touching the offence so charged, and not depart the court without leave. If any person, upon being required to enter into recognizance as aforesaid, shall refuse, it shall be lawful for such judge or justice of the peace to commit him or her to jail, there to remain until he or she shall enter into such recognizance, or be otherwise discharged by due course of law.

The prosecutor to be recognized to appear at court.

SEC. 5. All recognizances that have any relation to criminal matters, shall be taken to the people of this state, shall be signed by the person or persons entering into the same, be certified by the judge, justice of the peace, or other officer taking the same, and delivered to the clerk of the circuit court, on or before the day mentioned therein for the appearance of the witness or accused therein bound. Recognizances taken in courts of record need not be signed or certified as aforesaid. Recognizances for assaults, batteries, and affrays, shall be for the appearance of the accused before the justice of the peace taking the same, or before some other justice of the county, on the day appointed by the justice for the trial of the offender.

Recognizance, how taken, &c.

SEC. 6. Where any person shall be committed to jail on a criminal charge, for want of good and sufficient bail, except for treason, murder, or other offence punishable with death, or for not entering into a recognizance to appear and testify, any judge, or any two justices of the peace, may take such bail or recognizance in vacation, and may discharge such prisoner from his or her imprisonment. It shall be the duty of the judge or justice committing such person to jail, to endorse on the warrant of commitment, in billable cases, in what sum bail ought to be taken.

Persons committed for want of bail.

Mittimus, endorsement on.

SEC. 7. When a charge shall be exhibited upon oath before any judge, or justice of the peace, against any person for a criminal offence, it shall be the duty of the judge or justice of the peace before whom the charge shall be made, to issue his warrant for the apprehension of the offender, directed to all sheriffs, coroners, and constables, within the state; and it shall be the duty of any sheriff, coroner, or constable, into whose hands any such warrant shall come, to execute the same within their respective counties, and if the offender shall be found therein, to arrest and convey such offender before the judge or justice of the peace who issued the warrant, or before some other justice of the peace of the same county. When any such sheriff, coroner, or constable, or other person called to the assistance of such sheriff, coroner, or constable, shall be in pursuit of any offender, having a warrant for the apprehension of such offender, and the offender shall cross the line into the adjoining county, such sheriff, coroner, constable, or other person may pursue such offender into such adjoining county and make the

Warrant, to whom directed.

arrest, as if such offender had been found in the county of the officer in pursuit.

Warrants may be directed to any person named therein.
 SEC. 8. Any judge or justice of the peace, issuing any such warrant, may make an order thereon, authorizing a person to be named in such warrant to execute the same, and the person named in such order may execute such warrant any where in the state, by apprehending and conveying such offender before the judge or justice issuing such warrant, or before some other justice of the same county, and all sheriffs, coroners, and constables, and others, when required in their respective counties, to be aiding and assisting in the execution of such warrant.

Officers having custody of offenders.
 SEC. 9. Any person or persons, officer or officers, who may have the custody of any offender or offenders, by virtue of either of the two preceding sections, may take or carry such prisoner or prisoners into any other county which may be situated on his or their way back to the county from which the said prisoner or prisoners fled, and may deposit such prisoner or prisoners in any jail on his or their route, for safe custody, for one night or more, as occasion may require. Upon their arriving in the county to which the prisoner or prisoners is or are sent, under the last preceding section, such officer or officers, person or persons, shall deliver such prisoner or prisoners into the custody of the sheriff or jailer, together with the warrant of the said judge or justice, which shall be a sufficient justification to the said sheriff or jailer to receive and detain such prisoner or prisoners, until he, she, or they obtain bail, if the offence be bailable, or be otherwise discharged by due course of law.

How to proceed.
 SEC. 10. It shall not be necessary to the validity of any warrant for the apprehension of any person charged with an offence, or warrant of commitment, or search warrant, that it be under the seal of the judge or justice of the peace granting or issuing the same; but every such warrant under the hand of the judge or justice of the peace, shall be as valid in law as if a seal were affixed. And no person shall be discharged on *habeas corpus* from his imprisonment merely by reason of any defect of legal precision, or want of technical form in the warrant of commitment, but the court or judge awarding such *habeas corpus* shall, in all such cases, proceed and determine as if the *mittimus* had all legal and technical form: *Provided*, Sufficient appear on the face of the *mittimus* to ascertain for what crime or offence such prisoner or prisoners shall have been committed.

Warrants need not be under seal.
 SEC. 11. It shall be lawful for any judge or justice of the peace, upon complaint made before him upon oath or affirmation, that a larceny has been committed, and that the person affirming or swearing does verily believe that the stolen goods or other property, are or is concealed in any dwelling-house, out-house, garden, yard or other place or places, to issue a warrant under his hand commanding every such dwelling-house or place to be searched in the day time; and if any of the goods described in any such warrant, be found therein, then that the said goods be seized and brought before the judge or justice issuing said warrant. If, upon examination of witnesses before the judge or justice of the peace who issued said warrant, it shall be determined by such

Search warrants and proceedings thereon.

judge or justice that the goods so brought before him have been stolen, it shall be the duty of such judge or justice either to keep possession of, or to deliver, or cause to be delivered, such goods to the sheriff of the proper county, there to remain until the conviction of the thief, or the claimant's right be otherwise legally ascertained. If the thief shall not be indicted at the next circuit court after the goods shall be seized, and an action shall not be commenced against the person or persons in whose possession such goods shall have been found for the recovery thereof within one month after a circuit court shall have been held after such seizure, the said circuit court shall, at their next session, order such goods to be re-delivered to the person in whose possession they were found, which order shall be obeyed by the person in whose possession such goods, may at the time, be. In case the judge or justice of the peace shall, upon such examination as aforesaid, determine that such goods so seized had not been stolen, then the goods shall be immediately restored to the person from whose possession they were so taken.

SEC. 12. All acts and parts of acts coming within the purview of this act, are hereby repealed. This act to take effect from and after the first day of July next. *Acts repealed.*

APPROVED, January 6, 1827.

AN ACT to amend the act relative to Criminal Jurisprudence, approved January 30, 1827. *In force Jan. 19, 1829.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That any person who shall hereafter knowingly disturb the peace and good order of society, by labor, or amusement, on the first day of the week, commonly called Sunday, (works of necessity and charity excepted,) shall be fined upon conviction thereof, in any sum not exceeding five dollars. That any person who shall by menace, profane or vulgar language, or disorderly or immoral conduct, disturb the peace or good order of any congregation, assembled for divine worship, such person so offending shall be deemed guilty of a high misdemeanor, and upon conviction thereof, shall be fined in any sum not exceeding fifty dollars: *Provided*, That this act shall not be construed to prevent watermen from landing their passengers, lading and unlading their cargoes, or ferrymen from carrying over the water travellers, or persons moving with their families, on the first day of the week: *Provided*, That the section shall not prevent the due exercise of the rights of conscience by any person who may think proper to keep any other day as a Sabbath than the first day of the week. *Sabbath breaking. How punished. Disturbing congregation. How punished. Proviso. Further proviso.*

SEC. 2. That whoever shall be guilty of any noise, rout, or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, such person so offending shall be deemed guilty of a misdemeanor, and upon con-

Hone punished. vicition thereof, shall be fined in any sum not exceeding twenty-five dollars.

Jurisdiction of justices. SEC. 3. The justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offences committed in their counties, and upon view, or information upon oath, may cause any such person, having offended, or being charged with having offended, as aforesaid, to be apprehended and brought before him to answer such charge.

Jury trials. SEC. 4. When any person, having offended, or being charged with having offended, as aforesaid, shall be brought before any justice of the peace, if such person shall require it, a jury of not less than six, nor more than eight, shall be summoned to try the cause, and if the jury shall find the defendant guilty, they shall assess the fine, and the justice shall enter judgment therefor; but if no jury shall be required, the justice shall hear the cause, and render such judgment as to him shall seem right.

Judgment. SEC. 5. The judgments rendered under this act shall be subject to appeals, as in cases of assault and battery and affrays, and shall be collected in the same manner.

Appeals.

APPROVED, January 19, 1829.

See "Worshipping Congregations." See also "Canal Lands," and also "Roads."

In force June 1st, 1837.

AN ACT to amend an "act to regulate the apprehension of offenders, and for other purposes, approved January 6, 1827."

Names of witnesses to be entered on warrant of commitment.

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That it shall be the duty of the judge or justice of the peace who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offence is not by law bailable, to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said judge or justice.

SEC. 2. Whenever any prisoner in the custody of the sheriff or jailor of any county, on any warrant of commitment as aforesaid shall demand of said sheriff or jailor, a copy of said warrant of commitment, said sheriff or jailor shall endorse on the said copy the names of the witnesses written thereon as aforesaid, and any justice or judge who shall neglect to write the name or names of the witnesses aforesaid, on the warrant of commitment, or any sheriff or jailor shall neglect to endorse the name of said witness or witnesses on any copy of said commitment, each justice, judge, sheriff or jailor offending in the premises shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name of, and for the use, of any person who shall sue for the same in any court of record.

Fine for neglect.

SEC. 3. Whenever a habeas corpus shall be issued to bring the body of any prisoner committed as aforesaid, unless the court or

judge issuing the same, shall deem it wholly unnecessary and useless, the said court or judge shall issue a subpoena to the sheriff of the county where said person shall be confined, commanding him to summon the witness or witnesses therein named, to appear before such judge or court, at the time and place when and where such habeas corpus shall be returnable, it shall be the duty of such sheriff to serve said subpoena if it be possible, in time to enable such witness or witnesses to attend. It shall be the duty of the witness or witnesses thus served with said subpoena to attend and give evidence before the judge or court issuing the same on pain of being guilty of a contempt, and shall be proceeded against accordingly by said judge or court.

Subpoena to be issued for witness.
Witnesses shall attend and give evidence.

SEC. 4. On the hearing of any habeas corpus issued as aforesaid, it shall be the duty of the judge or court who shall hear the same, to examine the witness or witnesses aforesaid, and such other witnesses as the prisoner may request, touching any offence mentioned in the warrant of commitment as aforesaid, whether said offence be technically set out in said commitment or not, and upon which hearing, said judge or court may either re-commit, bail or discharge the prisoner according to the facts of the case.

This act to take effect from and after the first day of June next.

APPROVED, 11th February, 1837.

DELIVERY BONDS.

AN ACT to regulate the taking of Delivery Bonds.

In force July 2, 1835.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That whenever a sheriff shall have levied an execution, issued from the courts of records, upon the personal property of any defendant, or shall be about to make such levy, and the defendant be desirous of retaining the same in his possession, such sheriff shall take a bond from such defendant with security that the property shall be forthcoming, or delivered, at such time and place, as shall be named in the condition, and that the same shall not be disposed of nor injured, and a bond so taken shall not be considered void, as taken by color of office.

Sheriff shall take a delivery bond.

SEC. 2. Where bonds have been and shall be taken by a sheriff, for the forthcoming and delivery of property, and the defendant or his security shall not return the property named in the said bond conformably to the condition thereof, the officer having such execution, may proceed to execute the same in the same manner as if no levy had been made; and in case the defendant's property, or a sufficiency thereof, cannot be found, the officer may proceed to levy on so much of the property of the security in the delivery bond as will make the amount called for in such bond, and the property which may be so taken, may be sold by giving ten days notice thereof, and no further delivery bond shall be allowed.

Bond when not complied with execution may be levied as if no levy had been made.

SEC. 3. The 17th section of an act concerning judgments and

Acts re-
pealed.

executions, approved, January 17, 1825, and all of the act "to regulate the taking of delivery bonds and for other purposes," approved, January 26, 1826, be, and the same are hereby repealed. This act to be in force from and after the first of July next.

APPROVED, March 1, 1833.

DEPOSITIONS.

In force
June 1,
1827.

AN ACT regulating the mode of taking Depositions, and to provide for the perpetuating of testimony.

Depositions
of non-resi-
dent wit-
nesses.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That when the testimony of any non-resident witness or witnesses shall be necessary in any civil cause depending in any court of law or equity in this state, it shall be lawful for the party wishing to use the same, on giving to the adverse party or his attorney ten days previous notice, together with a copy of the interrogatories intended to be put to such witness or witnesses, to sue out from the proper clerk's office a *dedimus potestatem*, or commission under the seal of the court, directed to any number of persons, not exceeding three, as commissioners, or to any judge or justice of the peace of the county or city in which such witness or witnesses may reside, authorizing and requiring him or them to cause such witness or witnesses to come before him or them at such time and place as he or they may designate and appoint, and faithfully to take his, her, or their deposition or depositions upon all such interrogatories as may be inclosed with, or attached to said commission, both on the part of the plaintiff and defendant, and none others; and to certify the same when thus taken, together with the said commission and interrogatories into the court in which such cause shall be depending, with the least possible delay.

Of resident
witnesses.

SEC. 2. When the testimony of any resident witness or witnesses shall be necessary in any suit in chancery in this state, it shall be lawful for the party wishing to use the same to cause the deposition or depositions of such witness or witnesses, to be taken before any justice of the peace, or clerk of the circuit or county commissioners' court of the county wherein such witness or witnesses shall reside without being required to sue out a commission or to fill interrogatories for such purpose, on giving to the adverse party or his attorney reasonable notice of the time and place of taking the same. And it shall also be lawful, upon satisfactory affidavit being filed, to take the depositions of witnesses residing in this state, to be read in suits at law in like manner as is above provided in all cases where such witness or witnesses shall reside in a different county from that in which the court shall be held, is or are about to depart from the state, is or are confined in jail on legal process; or is or are unable to attend such court on account of advanced

age, sickness, or other bodily infirmity: *Provided*, that such reasonable notice shall be intended to mean at least ten days, in all cases, and one day in addition thereto, (Sundays inclusive,) for every thirty miles travel from the place of holding the court, to the place where such deposition or depositions shall be taken.

SEC. 3. Previous to the examination of any witness whose deposition is about to be taken as aforesaid, he or she shall be sworn (or affirmed) by the person or persons authorized to take the same, to testify the truth in relation to the matter in controversy, so far as he or she may be interrogated; whereupon, the said commissioner or commissioners, judge, justice of the peace or clerk, (as the case may be,) shall proceed to examine such witness upon all such interrogatories as may be enclosed with, or attached to any such commission as aforesaid, and which are directed to be put to such witness, or where no commission shall be necessary, upon all such interrogatories as may be directed to be put by either party litigant, and shall cause such interrogatories, together with the answers of the witness thereto, to be reduced to writing in the order in which they shall be proposed and answered, and signed by such witness.—After which it shall be the duty of the person or persons taking such deposition, to annex at the foot thereof, a certificate subscribed by himself, or themselves, stating that it was sworn to and signed by the deponent; and the time and place, when and where the same was taken. And every such deposition, when thus taken and subscribed, and all exhibits produced to the said commissioner or commissioners, judge, justice of the peace, or clerk as aforesaid, or which shall be proved or referred to by any witness, together with the commission and interrogatories, if any, shall be enclosed, sealed up, and directed to the clerk of the court in which the action shall be pending, with the names of the parties litigant endorsed thereon: *Provided*, that when any deposition shall be taken as aforesaid, by any judge or justice of the peace out of this state, such return shall be accompanied by a certificate of his official character under the great seal of the state, or under the seal of the proper court of record of the county or city wherein such deposition shall be taken.

SEC. 4. Every examination and deposition which shall be taken and returned, according to the provisions of this act, may be read as good and competent evidence in the cause in which it shall be taken, as if such witness had been present and examined by parol in open court on the hearing or trial thereof.

SEC. 5. Each and every commissioner or commissioners, judge, justice of the peace, or clerk of the circuit or county commissioners' court, who may at any time be required to take depositions in any cause pending in any of the courts of law or equity in this state, or by virtue of any commission issued out of any court of record in any other state or territory, shall have power and authority to issue subpoenas, if necessary, to compel the attendance of all such witnesses as shall be named in the commission, or by the parties litigant, where no commission is necessary in the same manner and under the same penalties as is prescribed in other cases, where witnesses are directed to be subpoenaed.

SEC. 6. Every witness attending before any commissioner, judge,

Compensation of witnesses. justice of the peace, or clerk as aforesaid, to be examined as aforesaid, shall be entitled to a compensation for his time and attendance and travelling expenses at the same rate for the time being, as is, or shall be allowed by law to witnesses attending courts of record in this state; and the party requiring such examination shall pay the expenses thereof, but may, if successful in the suit, be allowed for the same in the taxation of costs.

Informality what will be. SEC. 7. The party, his attorney, or any person who shall in any wise be interested in the event of the suit, shall not be permitted to dictate, write, or draw up any deposition or depositions which may, at any time, be taken under this act; and every deposition so dictated, written, or drawn up, or that shall be returned to the court unsealed, or the seal of which shall be broken, shall be rejected by the court as informal and insufficient: *Provided*, such seal shall have been broken previous to its reception by the clerk, to whom it shall be directed.

Seals not to be broken. SEC. 8. It shall not be lawful for any party litigant or the clerk of the court into which any deposition may be returned as aforesaid, to break the seal of the same, either in term time, or in vacation, unless by permission of the court. And if any such person or clerk shall presume to open any such deposition when taken and returned as aforesaid, without such permission as aforesaid, he shall be considered guilty of a contempt of court, and may be punished accordingly: *Provided*, that it shall not be considered an offence for the clerk to break open any such deposition as aforesaid, where it is doubtful from the endorsements made thereon, whether the same be a deposition or not; but in such case, it shall not be proper for such clerk to permit any person to examine any deposition, which may be thus opened by mistake, until permission shall have been first given by the court as aforesaid.

Depositions when read in evidence. SEC. 9. All depositions taken in pursuance of this act, when returned into court, may be read by either party, on the trial of the causes to which they relate.

Perpetuating of testimony. SEC. 10. In all cases hereafter, where any person or persons shall desire to perpetuate the remembrance of any fact, matter, or thing, which may relate to the boundaries or improvements of land, name, or former name of water courses, the name or former name of any portion or district of country, regarding the ancient customs, laws, or usages of the inhabitants of this country, as far as the same may relate to the future settlement of the land claims, or touching the marriage or pedigree of any person or persons, or in relation to the title to slaves or servants, or any other matter or thing, necessary to the security of any estate, real or personal, or mixed, or any private right whatever, it shall be lawful for such person or persons, upon filing a petition supported by affidavit, in the circuit court of the proper county, setting forth particularly the fact or facts, intended to be established, to sue out from such court a *dedimus potestatem*, or commission, directed to any two justices of the peace, or to any clerk of the circuit or county commissioners' court of the county wherein such testimony is to be taken, and may, thereupon, proceed to take such deposition or depositions as shall be prayed for in said petition.

SEC. 11. It shall be the duty of the person or persons suing

out such *dedimus* as aforesaid, before proceeding to take such deposition as aforesaid, to give at least four weeks previous notice of the time and place when and where the same is to be taken, together with a copy of the petition annexed thereto, to each and every person who may be known to be interested in the subject matter of such deposition, or to his, her, or their attorney, or in case the person be a *feme covert*, to her husband; or if a minor or minors to his, her, or their guardian or guardians; or if such guardian or guardians should be interested, to such guardian or guardians as shall be appointed by the court, to defend the interests of such infant or infants; or in lieu of such written notice as aforesaid, such petitioner or petitioners shall cause a notice in form as aforesaid, with a copy of the petition thereto annexed as aforesaid, addressed to such persons as may be known to be interested as aforesaid, as well as to all others whom it may concern, to be published for four weeks successively in some public newspaper printed in this state, at least eight weeks previous to the day of taking such deposition or depositions.

SEC. 12. The said justices of the peace or clerk as aforesaid, shall attend at the time and place appointed, where each and every person who may think himself or herself interested in the deposition about to be taken, may attend by themselves or attorneys, and may examine and cross examine such deponent or deponents; and all such questions as may be proposed, together with the answers thereto by the witness, shall be reduced to writing in the English language, or in the language of the witness: (*Provided*, he or she shall not understand English,) as near as possible, in the exact words of such deponent, which said questions and answers, when reduced to writing as aforesaid, shall be distinctly read over to the witness; and if found to be correct, shall be signed by him or her, in the presence of the said justice, (or clerk as the case may be,) who shall thereupon administer an oath or affirmation to such witness, as to the truth of the deposition so taken as aforesaid, and shall annex at the foot thereof a certificate subscribed by himself or themselves, stating that it was sworn to and signed by the deponent, and the time and place, when and where the same was taken; and all such depositions when thus taken, shall be carefully sealed up, and transmitted to the clerk of the circuit court of the county from which such *dedimus* shall have been issued, within thirty days from the time of taking the same; who shall thereupon enter the same at large upon the records in his office, and shall certify on the back of such deposition that the same has been duly recorded, and return it to the person or persons for whose benefit it shall have been taken.

SEC. 13. All depositions taken in manner and form as is provided in the two foregoing sections, or a duly certified copy of the record of any such deposition, may, in case of the death of any such deponent, or in case of inability to give testimony, in consequence of his, her, or their insanity or imbecility of mind or body, or where such witness shall be rendered incompetent by judgment of law, or in the event of his, her, or their removal, so that their testimony cannot be obtained in the ordinary way on trial, may be used as evidence in any case to which the same may relate: *Pro-*

Notice to be given in such cases.

Opposite party may attend and cross examine.

Such testimony may be read in case of the death or legal disability of deponent.

vided, that nothing herein contained, shall be so construed as to prevent any legal exception being made and allowed to the reading of any such deposition in any trial at law or in equity, in which the same may be introduced as evidence.

Acts repealed.

SEC. 14. The act entitled "an act regulating the manner of taking depositions," approved February 19th, 1819, the act entitled "an act regulating the mode of taking depositions," approved January 31st, 1821, the act entitled "an act to amend an act regulating the mode of taking depositions, approved January 31st, 1821," approved February 10th, 1823, and also the act entitled "an act directing the mode of perpetuating testimony," approved February 25th, 1819, and particularly sections 17, 18, 19, 20, 21, 22, 23, 24 and 25, of the act entitled "an act to prescribe the mode of proceeding in chancery," approved January 26th, 1827, as well as all other acts and parts of acts which shall come within the purview of, or be repugnant to, this act, be, and the same are hereby repealed: *Provided*, that nothing in this act contained, shall be so construed as to effect any deposition heretofore taken in conformity with the existing laws; or to effect any deposition which may be hereafter taken, upon interrogatories now filed, or which may be filed before this act takes effect, or where notices have been, or may hereafter be given for such purpose so long as the existing laws upon that subject shall remain in force.

This act to take effect from and after the first day of June next.

APPROVED, Feb. 9, 1827.

DETINUE.

AN ACT concerning the action of Detinue.

In force
Jan. 6,
1827.

Affidavit to
be made
before a ca-
pias in deti-
nue can
issue.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all actions of detinue, where the plaintiff shall file in the office of the clerk of the court in which such action is to be commenced, an affidavit on the oath or affirmation of the plaintiff or some other credible person, stating that the property, to recover which such action is about to be commenced, is the property of the plaintiff, stating the value thereof, and that the defendant unlawfully detains the same, the clerk shall issue a writ of *capias in detinue*, and endorse the amount so sworn to, and direct the sheriff to take bail in double that sum.

Sheriff to
take the
body of de-
fendant
unless he
give bond.

SEC. 2. It shall be the duty of any sheriff to whom a writ of *capias in detinue* shall be directed, to take the body of the defendant and commit him to the common jail of the county, unless he shall enter into a bond to the plaintiff, conditioned that if judgment shall be rendered in such action against him, he will deliver to the plaintiff the property which shall be thereby recovered, and pay all damages which shall be assessed for the detention thereof, and costs of suit; the sheriff shall return such bond with the writ, as in other cases.

SEC. 3. If any sheriff shall return any such writ executed, and shall not have the body of the defendant according to the command of the writ, or return a bond, as is provided in the preceding section, or the bond returned shall be adjudged insufficient by the court, and the defendant shall fail to perfect his bail if ruled thereto, the sheriff shall be made a co-defendant and may defend the suit upon the pleas of the defendant, and shall be subject to the same judgment and recovery as the defendant, and be joined therein. All questions concerning the sufficiency of such bond shall be determined during the return term.

Sheriff's
liability for
improper
return.

SEC. 4. When any bond as aforesaid shall be forfeited, the plaintiff shall have the same remedy against the bail, and the bail shall have the same remedy against the principal, and the sheriff, when made a co-defendant, shall have the same remedy against the principal and bail as is or may be provided by law in cases of bail in other civil causes, and the same proceedings shall be had thereon.

Bond when
forfeited,
remedy
thereon.

SEC. 5. Any court out of which any writ as aforesaid shall issue, or any judge thereof in vacation may reduce the sum for which bail is demanded, and the court may except the surrender of the defendant and cancel such bond in the same manner, for the like causes, and with the like effect as in other cases of bail in civil actions.

Bail, court
may reduce
the amount.

SEC. 6. All actions commenced in manner aforesaid, shall be conducted and proceeded on in all things according to the principles and usages of law in actions of detinue. If any verdict for the plaintiff shall omit the price, or value or damages for detention, the court may, at any time, award an enquiry to ascertain the same.

Proceed-
ings in
detinue.

APPROVED, Jan. 6, 1827.

DIVORCES.

AN ACT amending the law concerning Divorces.

In force.
Jan. 12,
1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all marriages, where either of the parties had a former husband or wife living at the time of solemnizing the last marriage, shall be void; and any woman or maiden, who shall be duped or deceived into such subsequent marriage, shall be restored to all the rights she would have had, if such marriage had not taken place, and may sue for and recover damages for such fraud, as in cases of breach of marriage contract.

Fraudu-
lent mar-
riage de-
clared void.

SEC. 2. When any divorce shall hereafter be granted for any cause, the court, before which the same shall be tried, if the person applying being a female, shall be poor and unable to pay costs, shall direct that no costs shall be taxed against such person, or charged for printing the notice: *Provided*, such person shall publish her notice in the paper published by the public printer.

Females to
be divorced
without
costs in cer-
tain cases.

APPROVED, Jan. 12, 1827.

In force
June 1,
1827.

AN ACT concerning Divorces.

Divorces
may be
granted.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever a marriage has been, or hereafter may be contracted and solemnized between any two persons, and it shall be adjudged in the manner hereinafter provided, that either party, at the time of such marriage was, and continues to be naturally impotent, or that he or she had a wife or husband living at the time of such marriage, or that either party has committed adultery subsequently to the marriage, or wilfully deserts and absents himself or herself from the husband or wife, without any reasonable cause, for the space of two years, and for extreme and repeated cruelty or habitual drunkenness for the space of two years, in every such case it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract; but no such divorce shall, in any wise, affect the legitimacy of the children of such marriage, except in cases where the marriage shall be declared void on the grounds of a prior marriage: *Provided,* that any wilful desertion and absence which may have happened before this act takes effect, shall be computed part of the two years absence and desertion provided for in this act.

Proviso.

Circuit
court to
have juris-
diction in
such cases.

SEC. 2. The circuit court, sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony by this act allowed; and the like process, practice, and proceedings shall be had, as are usually had in other cases in chancery, except as is hereinafter provided, and except that the answer of the defendant need not be on oath. The proceedings shall be had in the county where the complainant resides, and the process may be directed to any county in the state.

Residence
of com-
plainant
what neces-
sary.

SEC. 3. No person shall be entitled to a divorce in pursuance of the provisions of this act, who has not resided in the state one whole year previous to filing his or her bill or petition, unless the offence or injury complained of was committed within this state, or whilst one or both of the parties resided in this state.

Collusion
of com-
plainant.

SEC. 4. If it shall appear to the satisfaction of the court that the injury complained of was occasioned by collusion of the parties, or done with the assent of the complainants for the purpose of obtaining a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery, when adultery is the ground of complaint, then no divorce shall be decreed.

SEC. 5. In all cases for a divorce, where the defendant shall appear and deny the charges in the complainant's bill or petition alleged, the same shall be tried by a jury; but if the bill or petition shall be taken for confessed, the court may proceed to a hearing of the cause, by examination of witnesses in open court, and no confession of the defendant shall be taken as evidence, unless the court or jury shall be satisfied that such confession was made in sincerity, and without fraud or collusion, to enable the complainant to obtain a divorce. But any marriage which may have been celebrated or had in any foreign state or country, may be proved by the acknowledgment of the parties, their co-habitation, and other circumstantial testimony.

SEC. 6. When a divorce shall be decreed, it shall and may be lawful for the court to make such order touching the alimony and maintenance of the wife, the care, custody and support of the children, or any of them, as from the circumstances of the parties and the nature of the case shall be fit, reasonable, and just. And in case the wife be complainant, to order the defendant to give reasonable security for such alimony and maintenance, or may enforce the payment of such alimony and maintenance in any other manner consistent with the rules and practice of the court. And the court may, on application, from time to time, make such alterations in the allowance of alimony and maintenance, as shall appear reasonable and proper.

Alimony
when al-
lowed.

SEC. 7. Any woman suing for a divorce, who shall make it appear satisfactory to the court, that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her complaint without costs, and in such cases, no fees shall be charged by the officers of the court. All acts heretofore passed on the subject of divorces, are, by this act, repealed.

Females
may sue,
&c.

This act to take effect on the first day of June next.

APPROVED, Jan. 31, 1827.

AN ACT amending the law concerning Divorces, approved Jan. 31st, 1827.

In force
December
4, 1832.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That in addition to the causes already provided by law for divorces from the bands of matrimony, courts of chancery in this state shall have full power and authority to hear and determine all causes for a divorce, not provided for by any law of this state. The same rule of proceeding shall be had as in other cases in chancery, and upon hearing of the bill, or bill and answer, and proofs and exhibits, if the court shall be satisfied of the expediency of decreeing a dissolution of the bands of matrimony, they shall have power to do so, and to make such order with regard to the costs as they may deem right, and also to make such order with regard to the children (if any) and the right of alimony, as they may think proper, under the provisions of an act of the Legislature entitled "an act concerning divorces, approved, January 31st, 1827."

Courts of
chancery to
have full
powers to
hear all
causes for
divorces not
provided
for by law.

Further
power of
said court.

This bill having been laid before the council of revision, and ten days not intervening before the adjournment of the General Assembly, the same not having been returned on the first day of the present session, it has become a law, this 4th day of December, 1833.

A. P. FIELD, *Secretary of State.*

DISTRICTS.

In force
Feb. 15,
1831.

AN ACT to lay out the State into districts, for the purpose of electing Representatives to the Congress of the United States.

Congressional districts.

1st District.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That for the purpose of electing three representatives to congress, the following districts are hereby established, numbered first, second and third. The first shall be composed of the counties of Gallatin, Pope, Johnson, Alexander, Union, Jackson, Franklin, Perry, Randolph, Monroe, St. Clair, Washington, Clinton, Bond, Madison, and Macoupin.

2d District.

The second district shall be composed of the counties of White, Hamilton, Jefferson, Wayne, Edwards, Wabash, Lawrence, Clay, Marion, Fayette, Montgomery, Shelby, Vermilion, Edgar, Coles, Clark, and Crawford. The third district shall be composed of the counties of Greene, Morgan, Sangamon, Tazewell, Macon, McLean, La Salle, Cook, Putnam, Peoria, Henry, Knox, Jo Daviess, Mercer, Warren, Hancock, McDonough, Fulton, Schuyler, Adams, Pike, and Calhoun.

The members to be elected, when.

Proviso.

SEC. 2. One representative to congress shall be elected in each of the several districts aforesaid, at the general election held in the several counties on the first Monday in August, 1832; provided, however, that if congress shall not apportion to this state three representatives, no election shall be held as aforesaid.

APPROVED, Feb. 15, 1831.

DOWER.

In force
June 1,
1827.

AN ACT for the speedy assignment of the Dower, and Partition of Real Estate.

Heir, &c. refusing to assign dower.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That when the heir or other person, having the next immediate estate of freehold or other inheritance, shall not, within one month next after demand made, assign and set over to the widow of the deceased to her satisfaction, her dower in, and to all lands, tenements, and hereditaments, whereof by law she is or may be dowable, according to the true intentment of law, then such widow may sue for, and recover the same, in the manner hereafter prescribed, against such heir or other person having the next immediate estate of freehold or inheritance, or tenant in possession, or other person or persons claiming right or possession in said estate.

Petition.

SEC. 2. Every widow claiming dower, may file her petition in the circuit court of the county against the parties aforesaid, stating their names, if known, setting forth the nature of her claim, and particularly specifying the lands, tenements, and hereditaments in

which she claims dower, and praying that the same may be allowed to her; and the clerk shall thereupon issue a summons to the parties to appear at the next term of the said court, to answer the complaint, which shall be served by the sheriff as other writs and process. If the parties be unknown, or do not reside in the county, said clerk shall cause an advertisement to be inserted in the nearest newspaper, printed in this state, to said premises, for four weeks successively, notifying said parties that such petition is filed, and requiring them or any of them to appear at the next term of the circuit court, and shew cause why such dower should not be assigned; and which publication shall be deemed due notice, and the parties aforesaid, or any other person interested therein, may appear and contest the widow's right to dower.

Summons.

Publication of notice.

SEC. 3. In all cases where the claim of the widow to dower may be contested, the parties contesting the same shall be required to enter their appearance to the action, and the court shall thereupon proceed to try the cause, or direct an issue for that purpose, as the circumstances of the case may require.

Appearing.

SEC. 4. Where any of the parties defendants are minors, and under age, and without guardians, the court shall appoint guardians *ad litem* for such minors.

Guardian ad litem for minors.

SEC. 5. Where the court adjudges that the widow shall recover dower, it shall be so entered of record, together with a description of the land out of which she is to be endowed; and said court shall thereupon appoint three commissioners, not connected with any of the parties, either by consanguinity or affinity, and entirely disinterested, each of whom shall take the following oath, to be administered by the court, or some justice of the peace: "I do solemnly swear, that I will fairly and impartially allot and set off to A. B. widow of C. D. her dower, out of the lands and tenements described in the order of the court for that purpose, if the same can be made, consistent with the interest of the estate, according to the best of my judgment, so help me God." And said commissioners shall set off and allot to said widow her dower by metes and bounds, according to quality and quantity of all the lands, tenements, and hereditaments described in said order of court: *Provided*, the widow shall have the homestead or dwelling-house of the husband, if she desire it, and make return in writing under their hands and seals to said court; which, if approved by said court, shall vest in her an estate in the lands and tenements so set off and allotted to her, for and during her natural life.

Judgment.

SEC. 6. No woman that shall be endowed of any lands, tenements, and hereditaments shall wantonly or designedly commit or suffer any waste thereon, on penalty of forfeiting that part of the estate whereupon such waste shall be made, to him or them that have the immediate estate of freehold or inheritance in remainder or reversion, (and in case of negligent or inadvertent waste,) by her done or suffered, the damages that may be assessed for such waste, to be recovered by action of waste.

Not to commit waste.

Damages for waste.

SEC. 7. Where a widow has claim to dower in lands lying in different counties, she may proceed in the circuit court of the county where the lands lie, and make recovery in the manner as is herein directed; and in all cases where the report assigning dower

Writ of possession.

shall be approved, the court shall forthwith cause the widow to have possession by a writ directed to the sheriff for that purpose, and such widow shall also be entitled to reasonable damages to be awarded her from the time of her demand and refusal to assign her her reasonable dower; which may be assessed by the court; or a jury, if required, shall be empannelled for that purpose, and execution may issue therefor.

And damages to be awarded the widow.

Widow to have the dwelling-house.

SEC. 8. The widow may, in all cases, retain the full possession of the dwelling-house in which her husband most usually dwelt next before his death, together with the out houses and plantation thereto belonging, free from molestation and rent until her dower be assigned.

Land not susceptible of division.

SEC. 9. If the commissioners aforesaid shall report that the lands or other estate is not susceptible of a division, without great injury thereto, a jury shall be empannelled to enquire of the yearly value of the widow's dower therein, and shall assess the same accordingly; and the court shall thereupon render a judgment that there be paid to such widow as an allowance in lieu of dower, on a day therein named, the sum so assessed as the yearly value of her dower, and the like sum on the same day in every year thereafter, during her natural life; and such jury shall, moreover, if the same has not been done, assess the damages which may have accrued down to the time of rendering the verdict.

Heirs may petition for assignment of dower.

SEC. 10. Heirs, or if under age, their guardians, or any other persons interested in lands, tenements, or hereditaments, may also petition the court to have the widow's dower assigned, which shall be proceeded in in the same manner as is prescribed in other cases.

How divorces shall effect dower.

SEC. 11. If any woman shall be divorced from her husband for the fault or misconduct of such husband, except where the marriage was void from the beginning, she shall not thereby lose her dower; but if such divorce be for her fault or misconduct, she shall forfeit her dower; and where a divorce is obtained for the fault and misconduct of the husband, he shall lose his right to be *tenant by the curtesy* in the wife's lands.

Adultery in wife.

SEC. 12. If a wife voluntarily leave her husband and commit adultery, she shall be forever barred her dower, unless her husband be voluntarily reconciled to her, and suffer her to dwell with him.

Joint tenants may petition for a division of their land.

SEC. 13. When any person, by last will and testament, shall devise his or her real estate, or any part thereof, to two or more devisees, not ascertaining the metes and boundaries of each devisee's share, and their shares be undivided, such devisees, or any of them, and should they or any of them be under age, their guardian or guardians may apply to the circuit court of the county where the whole of the lands, or a part thereof may lie, by petition in writing; and said court may order a division thereof to be made agreeably to the true intent and meaning of said last will and testament; and said court shall appoint three commissioners, not connected with any of the parties, either by consanguinity or affinity, and entirely disinterested; each of whom shall take an oath before the court, or some justice of the peace, fairly and impartially to make partition of said lands, if the same can be done

consistently with the interest of the estate: and the said commissioners shall go upon the premises and make partition of said lands, tenements, and hereditaments, assigning to each devisee his or her share, by metes and bounds, and shall make report of their proceedings to the next term of the circuit court; which report, if approved by said court, shall be entered of record, and shall be conclusive to all parties concerned.

Coparceners or tenants in common.

Entitled to a division.

SEC. 14. Where the real estate of any person dying intestate, shall descend to two or more children, or other heirs of the intestate, and the same be not divided, or where two or more persons, proprietors of any tract or tracts of lands, tenements, or hereditaments within this state, are desirous of having the same divided, the circuit court on application, by petition, may order and direct a division of such lands, tenements, or hereditaments, agreeably to the law of descents where the lands are claimed by descent, or agreeably to the rights of the parties, proprietors, and owners aforesaid, by metes and bounds, and shall, thereupon, appoint three commissioners, who shall make partition and return their proceedings under their hands and seals, as is prescribed in the previous section of this act; and which report, if approved by said court, shall be recorded as in case of devisees, and shall be conclusive on all parties concerned.

Notice to all

SEC. 15. All devisees, heirs, or owners of lands, tenements, or hereditaments as aforesaid, or the guardians of such as are under age, not applying for such division, (and if any heir, devisee, or owner, be under age, and without a guardian, the court shall appoint a guardian *ad litem* for such minor,) shall have notice of the application for such partition, by summons duly served, or by advertisement, to be published for four weeks in the nearest newspaper to the premises, printed in this state.

Lands not susceptible of division.

To be sold.

SEC. 16. Where any lands, houses, or lots, are so circumstanced, that a division thereof cannot be made without manifest prejudice to the proprietors of the same, and the commissioners appointed to divide the same, shall so report to the court: the court shall thereupon give an order to said commissioners, or other person or persons, to sell such lands, houses and lots, or houses, and lots at public vendue, upon such terms, and by giving notice of sale as the court shall direct, and who shall make and execute good and sufficient conveyance or conveyances to the purchaser or purchasers thereof; which shall operate as an effectual bar, both in law and equity against such owners or proprietors, and all persons claiming under them; and the moneys arising therefrom, to pay to the owners or proprietors of such houses and lots, their guardians or legal representatives, as shall be directed by said court.—The court to make such order in relation to costs as shall seem right.

Act repealed.

SEC. 17. An act for the speedy assignment of dower, approved, February 12, 1819, and an act for the partition of lands, approved, February 20, 1819, be, and the same are hereby repealed.

Compensation to commissioners.

SEC. 18. The commissioners to be appointed under this act, shall be allowed as a compensation for their services, one dollar per

day each, to be taxed as other costs. This act to take effect on the first day of June next ; but rights acquired under those acts are not affected by this act.

APPROVED, Feb. 6, 1827.

*In force,
27th Feb.
1837.*

AN ACT authorizing suits against persons whose names are unknown in certain cases.

*Application
to obtain an
order or
decree.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases, when application has been or shall hereafter be made before any circuit court of this State to obtain an order or decree for the assignment of dower, or for partition of any real estate under the provisions of the act entitled "an act for the speedy assignment of dower and partitions of real estate," approved on the sixth day of February, one thousand eight hundred and twenty-seven, and the name or names of any person or persons interested in the lands or premises whereof dower is asked to be assigned, or partitions to be made, is, or may be unknown to the party, making the application aforesaid, the person or persons whose name or names is, or may be unknown as aforesaid, may be made parties to such proceedings by the name and description of unknown proprietor or owners of the premises, or as the unknown heirs of any person who may have been interested in the same ; but in all cases when persons, whose names are unknown are made parties to any proceeding the party making the application shall, at the time of filing the petition, attach thereto an affidavit, stating that the names of the persons made parties as aforesaid, are unknown, and process shall issue against such persons by the name and description given in the petition, and notice of the pendency of the application shall be given to such parties by publication, as is required to be given to non-residents by the above recited act, and when such notice shall be given, the court shall act in the premises as though the parties so notified had been notified by their proper names.

*Names un-
known
made par-
ties to suit.*

*Party mak-
ing appli-
cation to
file an affi-
davit.*

*Notice to be
given by
publication.*

*Court to
have power
to hear and
determine.*

Proviso.

SEC. 2. In suits or proceedings under the provisions of this act, and the act to which this is an amendment, the court shall have power to hear and determine the same, according to the rights of the parties interested ; as fully and completely as if all persons interested had been made parties by their proper names : *Provided,* that during the pendency of any such suit or proceeding, any person claiming to be interested in the premises to be assigned or aperted may appear and answer the petition, and assert his or her rights by way of interpleader, and the court shall decide upon the rights of persons appearing as aforesaid, as though they had been made parties in the first instance.

*Court may
order a sale
of lands,
&c.*

SEC. 3. If in any suit or proceeding under the provisions of this act and the act to which this is an amendment, the court shall order a sale of any lands or premises, and the person making the sale shall report to the court that no person has appeared to claim

or receive the money belonging to any non-resident or person whose name is unknown, the court shall thereupon require the money belonging to the persons not claiming as aforesaid, to be deposited in the treasury of the State, subject to the further order of the court, and all money required to be deposited as aforesaid, shall be received by the State treasurer, and paid out upon the order of the court.

*Money to be
deposited in
treasury.*

SEC. 4. When money shall be deposited in the State treasury under the provisions of this act, the person or persons entitled to the same, may, at any time, apply to the court making the order of sale, and obtain an order for the same, upon making satisfactory proof to the court of his, or her, or their right thereto.

*Persons
entitled to,
may receive
money, &c.*

SEC. 5. In all suits in chancery, and suits to obtain the title to lands heretofore commenced or instituted, or which may hereafter be commenced or instituted in any of the courts of this State, if there be persons interested in the same whose names are unknown, it shall be lawful to make such persons parties to such suits or proceedings by the name and description of persons unknown ; or unknown heirs or devisees of any deceased person who may have been interested in the subject matter of the suit previous to his or her death : but in all such cases an affidavit shall be filed by the party desiring to make any unknown person a party, stating that the names of such persons are unknown, and process shall be issued against all parties by the name and description given as aforesaid, and notices given by publication as is required in proceeding against non-residents shall be sufficient to authorize the court to hear and determine the suit as though all parties had been sued by their proper names.

*Persons
unknown
made par-
ties to suits.*

*An affidavit
to be filed.*

*Notice to be
given by
publication.*

SEC. 6. All decrees, orders, judgments, and proceedings had or made under the provisions of this act and the act to which this is an amendment, shall be as binding and conclusive upon the parties and persons interested, as though all of such parties and persons had been sued by their proper names.

*Orders and
decrees
binding
upon par-
ties.*

SEC. 7. Commissioners appointed to assign dower or make partition of real estate, may make reports to the court, during the same term at which they were appointed and the court may, at such term, make all such orders upon such reports as may be necessary to a final disposition of the case.

*Commis-
sioners may
make report
to court.*

APPROVED, 27th February, 1837.

EDUCATION.

AN ACT confirming grants of Property made for the encouragement of Education, and for other purposes.

*In force
July 1,
1831.*

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all gifts and grants heretofore made of land for the erection of a school house, a house for divine worship, and for burying the dead, where such gift or

*Grants for
certain pur-
poses se-
cured to
those pur-
poses.*

grant of land shall not exceed ten acres for a church or burying ground, shall be held valid in law to the use of the person or persons or religious society therein named, for the purpose of education, for divine worship, or for the interment of the dead, and none other : *Provided*, that such gifts and grants shall be recorded in the county where such lands may lie, within twelve months from the passage of this act.

To be recorded.

SEC. 2. When any person shall hereafter deem it proper to make a donation or grant of land for the purpose of erecting a house for divine worship, a house for education, or for the interment of the dead, such deed of gift or grant shall be made and executed to the county commissioners of the proper county, and their successors in office in trust and for the use of the persons, society or collection of people therein named ; which shall be held and used by such society, persons, or body of people, as therein directed, for the sole use of education, divine worship, and interment of the dead and none other ; which deed shall be recorded in the recorder's office of the proper county, within twelve months after the execution of the same : *Provided*, that in no case shall such grant for the erection of a house for divine worship exceed in any quantity ten acres of land.

Deeds to be made to the county commissioners.

To be recorded.

Limitation.

Trespass how punished.

SEC. 3. If any person or persons shall commit any trespass upon the premises so granted, such trespasser shall be liable to pay all damages so committed, to be recovered in the name of any person who will sue for the same ; and when recovered shall be paid over to those persons or societies interested in the premises, to be expended by them in repairing such damages or making any improvements thereon that they may think fit.

Grants perverted or abandoned, to revert to county. Unless otherwise directed by donor.

SEC. 4. When any gift or grant, as aforesaid, shall be perverted, or used for any other purpose than contemplated by this act, or shall be abandoned by the donees, such gifts or grants shall become vested in the county where such lands may lie, unless otherwise directed, in such gift or grant by the donor, and shall be sold by the order of the county commissioners of such county, and the proceeds thereof applied for the use of education in such county.

APPROVED, Feb. 1, 1831.

EJECTMENT.

AN ACT to simplify proceedings in the action of Ejectment.

In force Jan. 3, 1836.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That in all cases where any person has heretofore entered upon and occupied, or shall hereafter enter upon and occupy, any lands, tenements, or hereditaments within this state, by virtue of any lease or permit, from the United States or this state, such person, his, her or their heirs or assigns, may have and maintain an action of ejectment against any person who

has or may enter upon such lands, tenements, or hereditaments, without the consent of such lessee, his, her, or their heirs or assigns ; and proof of the right of possession shall be sufficient to authorize a recovery : *Provided*, That such action shall be commenced within the time now limited by law.

APPROVED, Jan. 13, 1836.

ELECTIONS.

AN ACT to amend the act regulating Elections.

In force Feb. 9, 1827.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the county commissioners' courts of the several counties in this state, are hereby empowered to increase the election precincts of their respective counties for the election of members of the general assembly and other officers, to six, under the restrictions of the act to which this is an amendment.

County commissioners may increase the number of precincts. *Amended.

SEC. 2. There shall be appointed at the present session of the general assembly, in the mode prescribed by the " Act regulating the manner of appointing justices of the peace," approved February 19, 1819, a suitable number of justices of the peace for the several counties created at the present session of the general assembly ; any law to the contrary, notwithstanding.

Justices of the peace appointed.

APPROVED, Feb. 9, 1827.

AN ACT directing the mode of electing Electors of President and Vice President of the United States.

In force Jan. 11, 1827.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That there shall be elected, by general ticket, on the first Monday in November, one thousand eight hundred and twenty-eight, and on the first Monday in November, quadriennially thereafter, as many electors of President and Vice President of the United States, as this state may be entitled to elect, which election shall be conducted, and returns thereof made, in all respects, in the manner prescribed for the election of governor.

Electors to be chosen by general ticket.

SEC. 2. The clerks of the several county commissioners' courts shall, within fifteen days next after holding an election, send by express, to the secretary of state, an abstract of returns of said election. Immediately after the said re-

turns to the secretary.

* See Acts of 1835, following.

ry of states' office. turns shall have been made, the secretary of state, auditor of public accounts and treasurer, or any two of them shall, in the presence of the governor, or person administering the government, proceed to open and canvass said election returns, and to declare the person having the highest number of votes elected; but should any two or more persons be returned, with an equal and the highest vote, the said secretary, auditor, and treasurer, or any two of them shall, in the presence of the governor, or person administering the government, decide by lot which of the persons so equal and highest shall be elected.

Result of the election to be published. SEC. 3. The governor, or person administering the government, shall cause the result of the said election to be published in the paper printed by the public printer, and transmit by express, to the persons elected, certificates of their election.

SEC. 4. There shall be paid to said expresses out of the treasury, on the warrant of the auditor, mileage at the rate of ten cents per mile for bringing said return to the seat of government, or for carrying a certificate of election to an elector. The secretary of state shall certify to the auditor how much each express shall be entitled to for services rendered under this act.

Electors to meet at the seat of government. SEC. 5. The electors chosen as aforesaid, shall meet at the seat of government of this state, at the time appointed by the laws of the United States, and give their votes in the manner therein provided; and perform such duties as are or may be required by law. Each elector shall receive for every twenty miles necessary travel in going to the seat of government to give his vote, and in returning to his residence, to be computed by the most usual route, the sum of three dollars, to be paid on the warrant of the auditor, out of any money in the treasury, not otherwise appropriated. All prior acts on the subject of the election of electors of President and Vice President of the United States are hereby repealed.

Acts repealed. APPROVED, January 11, 1827.

In force June 1, 1829. AN ACT regulating Elections.

SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all general and special elections for governor, lieutenant governor, representative to congress, senators, and representatives to the general assembly, and county officers, shall be conducted in the manner hereinafter prescribed.

* Amended. Precincts laid not exceeding eight. SEC. 2. The county commissioners' court in this state shall divide their respective counties into as many election precincts as they may think expedient, not exceeding eight, including the county seat or place of holding courts, which shall always be one; and shall designate the house or place in each precinct, and in the precinct including the county seat, the house or houses, place or

* See acts of 1835, following.

places, at which elections are to be holden; and the precincts and places of holding elections, so established, shall so remain until changed by the county commissioners' court: And all general and special elections shall be held at the places so designated, until changed as aforesaid: *Provided, always,* that it shall be the duty of the county commissioners' court at any time, to change any place of holding elections, upon a petition of a majority of voters residing within the precinct: *Provided, further,* that the county commissioners shall, if they deem it necessary, organize two sets of judges and clerks of election, in the precinct including the county seat.

SEC. 3. The said county commissioners' courts shall, respectively, at the last stated term preceding any election, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election, in each election precinct; and the clerk of the said court shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days after the receipt of said notice, to serve said notice upon each of the said judges of election. The said judges of the election shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges of the election shall be and continue judges of all elections of civil officers, to be held within their precinct, until other judges shall be appointed, as herein before directed; and the said clerks of election may continue to act as such during the pleasure of the judges of the election. And the county commissioners' courts shall, from time to time, fill all vacancies which may take place in the office of judge of the election, in any election precinct within their respective counties.

SEC. 4. The clerks of the several county commissioners' courts shall, at least thirty days previous to any general election, and at least twenty days previous to any special election, make out and deliver to the sheriff of his county, three written notices thereof for each precinct, said notices to be, as nearly as circumstances will admit, as follows, to wit: "Notice is hereby given, that on Monday, the _____ day of _____ next, at the house of _____ in _____ precinct, in the county of _____ an election will be held for governor, one lieutenant governor, one representative to the congress of the United States, one senator, three representatives in the general assembly of this state, one sheriff, one corner, three county commissioners, &c., (as the case may require,) which election will be opened at eight o'clock in the morning, and will continue open until six o'clock in the afternoon of the same day. Dated at _____ this _____ day of _____ in the year of our Lord one thousand eight hundred and _____

A. B. clerk of the county commiss'rs' court of _____ county."

And the said sheriff to whom such notices shall be delivered as aforesaid, shall post up in three of the most public places in each precinct, the three notices referring to such precinct, at least fifteen

Place of election in each to be designated. And may be changed.

Two sets of judges and clerks at county seat.

Judges of election to be appointed.

Who shall be notified thereof.

Judges to choose clerks.

Vacancies.

Three notices for each precinct.

Form thereof.

Sheriff to post them up.

days before the time of holding any general election, and at least eight days before the time of holding any special election.

Judge re-fusing.

SEC. 5. If any person appointed to act as a judge of the election as aforesaid, shall neglect or refuse to be sworn or affirmed to act in such capacity, the place of such person shall be filled by any justice of the peace, residing within the precinct, to be nominated by the other judge or judges of the election, and if there be no other justice present to act as judge, the other judge or judges of the election shall nominate one or more capable and discreet elector or electors, residing within the precinct, to fill such vacancy or vacancies; and if there be no judge of the election present to fill such vacancy or vacancies by nomination, then such vacancy or vacancies shall be filled by the votes of such qualified electors, residing within the precinct, as may then be present at the place of election; and the justice or justices, person or persons, so elected or nominated to fill such vacancy or vacancies, shall be, and are hereby vested with the same power as if appointed by the county commissioners' court.

Justice of the peace to act.

No judge attending, voters may elect.

Oath of judges and clerks.

SEC. 6. Previous to any votes being taken, the judges and clerks of the election shall severally take an oath, or affirmation, in the following form, to wit: "I, A B, do solemnly swear, (or affirm, as the case may be,) that I will perform the duties of judge, (or clerk, as the case may be,) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same."

By whom administered.

SEC. 7. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed a judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oaths or affirmations to each other, and to the clerks of the election; and the person administering such oaths or affirmations, shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll-books.

Entry thereof to be made.

Poll when opened and closed.

In case judges not attending.

SEC. 8. At all elections to be held under this act, the polls shall be opened at the hour of eight in the morning, and continue open until six o'clock in the afternoon of the same day, at which time the poll shall be closed: *Provided, however,* that if no judge shall attend at the hour of eight in the morning, and it shall be necessary for the electors present to appoint judges to conduct the election, as herein before prescribed, the election may, in that case, commence at any hour before the time for closing the poll shall arrive, as the case may require; *and, provided also,* that the judges of the election may, if they shall deem it necessary, for the purpose of receiving the votes of all the electors wishing to vote, postpone the closing of the polls until twelve o'clock at night. And upon opening the poll, one of the clerks, under the direction of the judges, shall make proclamation of the same, and thirty minutes before the closing of the poll, proclamation shall be made in like manner that the poll will be closed in half an hour.

Closing poll may be postponed.

Proclamation to be made.

Stationery.

Manner of voting.

SEC. 9. The clerks of the election shall furnish the necessary poll-books and stationery in conducting the same.

SEC. 10. The manner of voting shall be by the elector's ap-

proaching the bar, in the election room, at any time when the poll is open, and addressing the judges of the election in his proper person, and with an audible voice, to be heard by the judges and clerks of the election, to mention by name the persons he intends to vote for to fill the different offices which are to be filled at the said election, and the clerks shall enter his name and vote accordingly, and he shall then withdraw: *Provided,* that a voter may vote by presenting an open ticket to the judges, containing the names of the persons for whom he votes, and the offices; and the said judges shall read the same to the voter, and the clerks, with the assent of the voter, set the same down in their books, as in other cases.

Viva voce.

SEC. 11. It shall be lawful for any elector to vote for governor, lieutenant governor, and electors of president and vice president of the United States, at any place of holding an election within this state; for representatives to congress, at any place of holding an election within the congressional district in which such elector resides; for senator and representatives to the general assembly, at any place of holding an election within the senatorial or representative district in which he resides; for sheriff, coroner, and county commissioners, at any place of holding an election in the county in which he resides: But for justices of the peace and constables, he shall not vote out of the district in which he resides. And if any elector shall vote more than once at any election held under the authority of this act, he shall be fined in the sum of one hundred dollars, to be recovered by indictment before any court of competent jurisdiction, and the whole of such fine shall be appropriated to the use of the county, in which the offence may have been committed.

May vote for gov. &c. at any place.

Rep. in con. in the district.

For senator and rep. in general assembly.

Sheriff and co. com.

Jus. peace and constables.

Voting more than once.

How punished.

SEC. 12. When any person shall present himself to give his vote, and either of the judges shall suspect that such person does not possess the requisite qualifications of an elector, or if his vote shall be challenged by any elector who has previously given his vote at such election, the judges of the election shall tender to such person an oath or affirmation in the following form: "I, A B, do solemnly swear, (or affirm, as the case may be,) that I am a resident of the county of _____ in the state of Illinois; that I have resided in this state for the period of six months, immediately preceding this election; that I have, to the best of my knowledge and belief, attained to the age of twenty-one years; and that I have not voted at this election." And if the person so offering his vote, shall take such oath or affirmation, his vote shall be received, unless it shall be proved by evidence satisfactory to a majority of the judges, that said oath or affirmation is false: And if such person refuses to take such oath or affirmation, his vote shall be rejected.

Challenges

Oath and qualifications of voter.

Vote to be admitted.

Or rejected.

False oath how punished.

Unqualified persons voting how punished.

Provido.

And if any person shall take the said oath or affirmation, knowing it to be false, he shall be deemed guilty of wilful and corrupt perjury, and shall, on conviction, suffer such punishment as is now, or shall hereafter be prescribed by law, for persons guilty of perjury. And if any person shall vote at any election, who is not a qualified voter, he shall forfeit and pay any sum not exceeding fifty dollars, nor less than twenty-five, to be recovered in the same manner as other penalties under this act are: *Provided, however,* that if such

person shall have been considered by the judges of the election a legal voter, then such person shall not be so fined.

Constables to attend.

SEC. 13. For the preservation of order, as well as the security of the judges and clerks of the election from insult and abuse, it shall be the duty of any constable or constables, residing within the precinct, who shall be designated for the purpose by the judges of the election, to attend at all elections within such precinct ; and should no constable attend at such election, the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order, during the election : and the judges are hereby empowered to impose a fine, not exceeding twenty dollars, on any person or persons, who shall conduct in a disorderly and riotous manner, and persist in such conduct, after having been warned of its consequences ; and on refusal to pay the same, to commit him or them to the common jail of the county, for any time not exceeding twenty days, or until the fine shall be paid ; and the constable to whom the order shall be directed, and the jailer of the county, are hereby required to execute such order, and receive such person or persons, so committed, as though it had been issued or delivered by a magistrate in due form of law.

Special constable.

Power of judges to fine.

And imprisonment.

SEC. 14. When the votes shall have been examined and counted, the clerks shall set down in their poll-books, the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number he did receive, the number being expressed in words at full length, such entry to be made as nearly as circumstances will admit, in the following form, to wit : " At an election held at the house of in precinct, in the county of and state of Illinois, on the day of in the year of our Lord one thousand eight hundred and the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit :

Poll book what it shall contain.

Form.

- A B had fifty-three votes for governor.
 - C D had fifty one votes for governor.
 - E F had sixty-two votes for lieutenant governor.
 - G H had sixty votes for lieutenant governor.
 - I K had eighty votes for representative to congress.
 - L M had seventy-three votes for senator.
 - N O had sixty-five votes for representative.
 - P Q had fifty-nine votes for representative.
 - R S had fifty-seven votes for sheriff.
 - T U had twenty-two votes for coroner.
 - V W had thirty votes for county commissioner,
- and in the same manner for any other persons, or officers, voted for.

Certified by us,

A B, }
C D, } Judges of the election.

Attest : G H, }
I J, } Clerks of the election.

One poll book to be

The judges of the election shall then enclose and seal one of the poll-books, under cover, directed to the clerk of the county com-

missioners' court of the county in which such election is held, and the packet thus sealed shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot otherwise agree, and delivered to the said clerk of the county commissioners' court, at his office, within four days from the close of the polls ; and the other poll-book shall be deposited with one of the judges of the election, to be determined as aforesaid ; and the poll-book shall be subject to the inspection of any elector who may wish to examine it. And if any judge or clerk of an election, after having been deputed by the judges of the election, at which he shall have served as judge or clerk, to carry the poll-book of such election to the clerk of the county commissioners' court of the county, shall fail or neglect to deliver such poll-book to the said clerk, within the time prescribed by law, safe, with the seal unbroken, he shall, for every such offence, forfeit and pay the sum of five hundred dollars, for the use of the county, to be recovered in the name of the commissioners of the county, by an action of debt in the circuit court.

returned to the clerk of commissioners' court. By the judge or clerk.

The other lodged with the judges.

Failure of judge or clerk to deliver.

How punished.

SEC. 15. On the seventh day after the close of the election, or sooner if all the returns be received, the clerk of the county commissioners' court, taking to his assistance two justices of the peace of his county, shall proceed to open the said returns, and make abstract of the votes in the following manner : the abstract of the votes for governor and lieutenant governor shall be on one sheet, and the abstract of votes for representatives to congress shall be on another sheet, and the abstract of votes for senator and representatives to the general assembly shall be on another sheet, and the abstract of votes for county officers shall be on another sheet ; and it shall be the duty of the said clerk of the county commissioners' court, immediately to make out a certificate of election to each of the persons having the highest number of votes for senator and representatives to the general assembly, and county officers, respectively, and to deliver such certificate to the person entitled to it, on his making application for that purpose to the clerk at his office : *Provided, however,* that where two or more counties are united in one senatorial or representative district, the clerk of the county commissioners' court of the county last established, shall, within twelve days after the day of the election, attend at the office of the clerk of the county commissioners' court, of the senior county, and there, in conjunction with the clerk or clerks of the senior county or counties, shall compare the votes given in the several counties composing such senatorial or representative district ; and said clerks shall, immediately, make out a certificate of the election of the person or persons having the highest number of votes in such counties for senator or representative to the general assembly : which certificate shall be delivered to the person entitled to it, on his application to the clerk of the county commissioners' court of the senior county, at his office : *Provided, also,* that in the district composed of the counties of Johnson, Union, and Alexander, the several clerks shall meet at the seat of justice of Union county ; in the district composed of the counties of Bond, Fayette, Montgomery, Shelby, and Tazwell, the several clerks shall meet at the seat of justice of Fayette county ; in the district

Clerk to open the poll.

And make abstracts.

And certificates of election.

Two or more counties in one district.

Johnson, Union and Alexander.

Bond, Fayette, &c.

Pike, Fulton, &c. composed of the counties of Pike, Fulton, Peoria, Schuyler, Adams, and Jo Daviess, the several clerks shall meet at the seat of justice of Schuyler county; to compare the returns of votes given within such districts, for senators or representatives, or for either; and in every senatorial or representative district, containing four or more counties, the several clerks shall meet, on the fifteenth day after the election, for the purpose of comparing the returns of said votes. And it shall be the duty of the clerk of the county commissioners' court, in each county, on the receipt of the election returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of each election may be entitled, for their services, and lay the same before the next commissioners' court of the county; and the said court shall order the compensation aforesaid to be paid out of the county treasury.

Clerks to meet within fifteen days
Compensation of judges and clerks.

Persons having the highest and equal number of votes to decide by lot.

SEC. 16. If the requisite number of senators or representatives, or county officers, shall not be elected by reason of any two or more persons having an equal and the highest number of votes for one and the same office, the clerk or clerks, whose duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by the said clerk or clerks, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk or clerks shall make out and deliver to the person thus declared duly elected, a certificate of his election, as herein before provided.

Returns to the secretary of state.

Votes to be canvassed.

Governor to grant certificate. And issue a proclamation.

SEC. 17. The clerk of the county commissioners' court, immediately after making out abstracts of votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the office of the secretary of state; the abstract of votes for governor and lieutenant governor, being addressed to the speaker of the house of representatives, and inclosed with the other abstracts to the secretary's office as aforesaid; and it shall be the duty of the secretary of state, at the opening of the succeeding session of the general assembly, to deliver all such abstracts of votes for governor and lieutenant governor, or for either of them, to the speaker of the house of representatives. The secretary of state, auditor, treasurer, and attorney general, or any two of them, in the presence of the governor, shall proceed, within fifty days after the election, and sooner if all the returns be received, to canvass the votes given for representatives to congress; and the governor shall grant a certificate of election to the person or persons having the highest number of votes, and shall also issue a proclamation, declaring the election of such person or persons. In case there shall be no choice, by reason of any two or more persons having an equal number of votes, the election shall be determined by lot, under the direction of the governor, in the manner prescribed in the sixteenth section of this act.

Secretary may employ a messenger.

SEC. 18. If the returns of the election of any county in this state shall not be received at the office of the secretary of state, within thirty days after the day of election, the said secretary shall forthwith send a messenger to the clerk of the county commis-

sioners' court of such county, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid out of the state treasury the sum of ten cents for each mile he shall necessarily travel in going to, and returning from the office of the said clerk.

Compensation.

Liberty of resigning.

Vacancy how filled in case senator, &c.

Provido.

In case of sheriff, &c.

Writ of election.

Vacancy of representative in congress.

SEC. 19. Any person who shall receive a certificate of his election as senator or representative to the general assembly, sheriff, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or have taken the requisite oath of office. And when any vacancy shall happen in the office of senator or representative to the general assembly, by death, resignation, or otherwise, the governor shall issue a writ of election, directed to the sheriff of the county in which such vacancy shall happen, commanding him to notify the several judges of election in his county to hold a special election to fill such vacancy or vacancies, at a time to be appointed by the governor: *Provido*, That if there is to be no session of the general assembly between the happening of such vacancy and the time of the general election, it shall not be necessary to order a special election to fill such vacancy. And when any vacancy shall happen in the office of sheriff or coroner, either by death, resignation, or otherwise, the clerk of the county commissioners' court in which such vacancy shall happen, shall immediately notify the governor of such vacancy; and it shall be the duty of the governor to issue a writ of election, and direct the time when such election shall be held, the said writ to be directed to the said clerk. And when any vacancy shall happen in the office of representative to congress from this state, it shall be the duty of the governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy.

Vacancy of governor.

SEC. 20. If any vacancy shall happen in the office of governor by death, resignation, removal from office, or refusal by the governor elect to take the requisite oath of office, it shall be the duty of the secretary of state to notify the clerks of the county commissioners' courts of the several counties in this state, that at the next succeeding general election of members of the general assembly, or electors of president and vice president, (as the case may be,) an election will be held to fill such vacancy: *Provido, however*, That the secretary shall not give such notice, nor shall such special election of governor take place unless the vacancy shall have happened at least forty days previous to such general election for members of the general assembly, or of electors of president and vice-president of the United States, nor unless a regular session of the general assembly shall intervene between the time when such vacancy shall have happened and the succeeding quadrennial election of governor.

Contested elections. Senator or representative to the general assembly.

SEC. 21. If any candidate of the proper county shall desire to contest the validity of any election, or the right of any person declared duly elected to hold his seat in the senate or house of representatives of the general assembly, such candidate shall give notice of his intention in writing to the person whose election he intends to contest, or leave a notice thereof at his usual place of residence, within thirty days after the day of election, expressing the

Taking depositions. points on which the same will be contested, the name of one of the justices of the peace who will attend at the taking of the depositions, the place where, and the time when the said depositions will be taken ; which time so fixed upon for the taking of the depositions, shall not exceed sixty days from the day of election ; and the party whose election is contested shall have a right to select another justice of the peace, and the two justices so selected shall make choice of a third justice, and if they fail to agree upon a third justice to act with them, they shall proceed to select, by lot, a justice of the peace, who shall preside with them at the taking of such testimony ; and the three justices thus selected, or a majority of them, shall have power, and they are hereby authorized to issue subpoenas to all persons whose testimony may be required by either of the parties, commanding such person or persons to appear and give testimony, at the time and place therein mentioned, under the penalty of fifty dollars, to be levied on each and every delinquent who has been duly served with process : *Provided, however,* That should the person, whose election is contested, fail to nominate a justice as aforesaid, it shall be the duty of the justice nominated by the person contesting the election as aforesaid, to select a justice of the peace, who shall proceed as above stated. And if any witness or witnesses, summoned as aforesaid, shall fail or refuse to appear at the time specified in said notice, it shall be lawful for said justices, or either of them, to issue an attachment against such witness or witnesses, and the testimony of him, her, or them, so failing or refusing to appear, may be taken at any time before the next session of the legislature thereafter, by giving five days notice to the party whose election is so contested, and to the party contesting the same ; and if any justice of the peace selected as aforesaid to attend at the taking of the depositions shall, without reasonable excuse, fail or refuse to attend at the time and place appointed, after having undertaken to attend, he shall forfeit and pay a fine of fifty dollars, to be recovered by action of debt, in any court having cognizance thereof, one half to the county, and the other half to the person who will sue for the same. And the said justices, when met, shall hear, and certify under seal, all testimony relative to the said contested election to the speaker of the senate, or to the speaker of the house of representatives, as the case may require. And no testimony shall be heard by the said justices, on the part of the person contesting the election, which does not relate to the points specified in the notice, a copy of which notice, attested by the person who served or delivered the same, shall be delivered to the said justices, and by them transmitted, with the other documents, to the speaker of the senate, or to the speaker of the house of representatives, to whichever body the person whose election is contested belongs.

Penalty of judges & clerks refusing to act, &c. SEC. 23. If any judge of the election, or clerk, or any other officer or person, in any manner concerned in conducting the election, shall wilfully neglect, improperly delay, or refuse to perform any of the duties required by this act, after having undertaken to perform such duties, he shall forfeit and pay to the state the sum of forty dollars ; and if any such judge of the election, clerk, or other officer or person, in any wise concerned in conducting the

election, shall knowingly admit any person to vote, not qualified according to law, or shall knowingly receive and count more than one vote from one person, at the same election for one office, or shall be guilty of fraud, corruption, or partiality, or manifest misbehavior, in any matter or thing relating to said election, each and every person so offending shall forfeit and pay to the county the sum of one hundred dollars, to be recovered in any court of record in the state, in the name of the state, for the use of the county, in an action of debt, with costs of suit, or at the suit of any person who may sue for the same, one half for the use of the person suing, and the other half for the use of the county ; and every such person so offending as aforesaid, shall, moreover, on conviction, be rendered incapable of holding any office within this state, for the term of ten years thereafter. If any judges of election shall wilfully refuse to receive the vote of any elector, who has a right according to the constitution and laws of this state to vote at the polls where such judges preside, and who, being challenged, shall offer to take the oath prescribed in such case by this act, such judges of election so refusing, shall be liable to the penalty of fifty dollars, to be recovered by action of debt in the name of the state, or of any person who may sue for the same, one half of the said fine to go to the use of the county, and the other half to the use of the person suing : *Provided,* That nothing in this act shall be so construed as to prevent the judges of election from refusing to receive the vote of any person when it shall be proved to the satisfaction of a majority of them, that in taking the said oath he shall have sworn falsely. And if any judge of election shall order to be received the vote of any person who being challenged, shall not take the oath or affirmation prescribed by law, such judge of election, so offending, shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt, in the name of the state, or of any person suing therefor, the one half of said fine for the use of the county, and the other half for the use of the person suing.

And for other misconduct.
To be disqualified.
Refusing to admit voters.
Proviso.
Vacancy of senator, &c.
How filled.
Vacancy in the office of.
SEC. 24. When any vacancy shall happen in the office of senator or representative to the general assembly, by death, removal, or otherwise, it shall be the duty of the clerk of the county commissioners' court of the county, if one county only compose the senatorial or representative district, as soon as he shall have been informed thereof, to notify the governor of such vacancy, and if there be more than one county comprised within the limits of such senatorial or representative district, it shall be the duty of the clerk of the county commissioners' court of the senior county, in such district, so to notify the governor, and the governor, immediately upon his receiving such notification, shall proceed in the same manner as is prescribed, for other cases, in the 19th section of this act. And whenever any vacancy shall happen in the office of governor, either by death, removal, resignation, refusal to qualify, or any other cause, it shall be the duty of the secretary of state to notify the different sheriffs throughout the state, and order an election to be held to fill such vacancy, at the next succeeding election of representatives to the general assembly, and it shall be lawful for the people at the said election for representatives to elect a person to fill such vacancy : *Provided,* That such vacancy shall

happen at least one month previous to such election, and provided also, that such election shall take place previous to the stated quadrennial election of governor.

Election to be held on the 1st Monday in Aug. 1830. And biennially thereafter for gen. assem. &c. And quadrennially thereafter for gov. & li. gov. For congress on the 1st Monday in Aug. 1831, and '32 and biennially thereafter. Clerks not empowered to reject votes.

SEC. 25. On the first Monday in August, one thousand eight hundred and thirty, and on the first Monday in August biennially thereafter, there shall be an election in each county in this state, for representatives to the general assembly; senators, where under the provisions of the constitution of this state, a senator shall have to be elected; one sheriff; one coroner, and three county commissioners.* And there shall be held on the said first Monday in August, 1830, and quadrennially thereafter, an election throughout this state, for governor and lieutenant-governor.

SEC. 26. On the first Monday of August, in the year one thousand eight hundred and thirty-one, and on the first Monday of August, one thousand eight hundred and thirty-two, and on the first Monday of August, every second year thereafter, an election shall be held for so many representatives to congress, as this state shall be entitled to at that time.

SEC. 27. Nothing in this act shall be so construed as to authorize the clerks of the county commissioners' courts to reject the whole, or any part of the votes taken at any poll in pursuance of law.

Compensation to clerks and judges.

SEC. 28. There shall be allowed out of the county treasury of each county to the several judges and clerks of election, such compensation, not exceeding one dollar per day, as the county commissioners' courts shall deem proper to allow; and to the person carrying the polls from the place of election to the clerk's office, the sum of five cents per mile, for going and returning. The county commissioners' courts shall also allow to the clerks of election such compensation as they shall deem just, for any stationery such clerk may furnish for the purposes of the election.

Electors of president, &c. not attending to vote, vacancy be filled.

Proviso.

SEC. 29. In case any person, declared duly elected an elector of president and vice-president of the United States, shall fail to attend at the state-house, at the seat of government of this state, at or before the hour of 12 o'clock at noon, of the day on which his vote is required to be given, it shall be the duty of the elector or electors of president, and vice-president, attending at that time and place, to appoint a person or persons to fill such vacancy: *Provided*, That should the person, or persons, chosen by the people as aforesaid, arrive at the place aforesaid, before the votes for president and vice-president are actually given, the person or persons appointed to fill such vacancy, shall not act as elector of president and vice-president.

Acts repealed.

Proviso.

SEC. 30. The act entitled an act regulating elections, approved, March 1, 1819; and the act to provide for a new election in case of vacancy in the office of governor, approved, February 26, 1819; and the act entitled an act regulating elections, approved, February 3, 1821; the act entitled an act regulating elections, approved, January 3, 1823; and the act entitled an act supplementary to the act regulating elections, approved, January 17, 1825, are hereby

* Amended. See act of March 1, 1837, in relation to Co. Com.

severally repealed. *Provided*, That nothing in this act contained shall be so construed as to interfere with the provisions of an act to provide for the election of justices of the peace and constables, approved, December 30, 1826; but the elections of justice of the peace and constables shall, in all respects, not conflicting with the provisions of the last recited act, be conducted according to the provisions of this act; nor shall any thing in this act contained, be so construed as to interfere with the provisions of an act concerning sheriffs and coroners, approved, February 12, 1827.

Elections by the general assembly.

SEC. 31. In all elections by the general assembly, or by either house thereof, (elections of justices of the supreme court, and judges of inferior courts excepted,) the members shall vote *viva voce*, and their votes shall be entered upon the journals. Elections by joint vote of the two houses shall be made in the hall of the house of representatives, at such time as shall have been previously appointed by joint resolution of the two houses; and at all such joint meetings the speaker of the house of representatives shall preside. Elections of justices of the supreme court and judges of inferior courts shall be made by joint ballot of both houses, in the hall of the house of representatives, the speaker of which shall appoint a member of each house to act as tellers. No person shall be declared duly elected by the general assembly, or either branch thereof, until he shall have received a majority of all the votes given, blank votes included.

This act to take effect on the first day of June next.

APPROVED, Jan. 10, 1829.

In force Feb. 28, 1833.

AN ACT to amend an act, entitled, "An Act to regulate Elections."

Candidates desiring to contest the validity of an election shall give notice of such intention.

SEC. 1. *Be it enacted by the people of the State of Illinois,* Candidates represented in the General Assembly, That when any candidate shall desire to contest the validity of any election, or the right of any person declared duly elected, to hold and exercise the office of sheriff, coroner, county commissioner, justice of the peace, or constable, such candidate shall give notice of his intention, in writing, to the person whose election he intends to contest, or leave a notice thereof at his usual place of residence, within thirty days after the day of election, expressing the points on which the same will be contested, the name of one of the justices of the peace, who will attend at the trial of such contest, the time, and the place, when and where the said trial will be holden; which time shall not exceed sixty days from the day of election. And the person whose election is contested, shall, within five days after receiving said notice, select another justice of the peace, to attend said trial: *Provided, however*, That should the party whose election is contested, refuse or neglect to select a justice as aforesaid, the justice chosen by the person contesting the election as aforesaid,

Mode of contesting the same.

shall make such selection, and the two justices so selected or chosen, shall make choice of a third justice; and if they cannot agree upon a third justice to act with them, they shall make such selection by lot; and the three justices thus selected, or either of them, shall have power, and they are hereby authorized and required, to issue subpoenas and such other process as may be necessary to secure the attendance at such trial of all persons whose testimony may be required by either party, in the same manner as is provided in other cases of proceedings before justices of the peace.

The justices chosen as in the preceding section required, shall decide said election.

SEC. 2. The said justices shall meet at the time and place appointed for the trial of said contest as aforesaid, and after hearing and examining the evidence offered by both of the parties, they shall decide which of the said candidates shall have been duly elected, and certify the same to the clerk of the county commissioners' court of the proper county, who shall thereupon make out and deliver to the successful party a certificate of his election.

Shall give judgment for costs against the unsuccessful party. Appeals allowed.

SEC. 3. The said justices shall enter judgment against the unsuccessful party for all the costs of such contest. Either party may appeal from the decision of said justices to the circuit court as in other cases; and the decision of the circuit court shall be final.

Parts of acts repealed.

SEC. 4. The twenty-second section of the act to which this is an amendment, and the eighth section of an act to provide for the election of justices of the peace and constables, approved, December 30, 1826, are hereby repealed.

APPROVED, February 28, 1833.

See "Justices of the Peace and Constables."

In force Feb. 6, 1835.

AN ACT to amend an act, entitled "An act to amend an act entitled an act to provide for the Election of Justices of the Peace and Constables," approved, January 7, 1835.

Constables shall be elected in each Justice's district.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That when any new Justice's district may be laid out by the county commissioners' court of any county in this State, as provided for in the act to which this is an amendment, Constables shall be elected in such new districts in the same manner that Constables are now elected in Justice's districts.

SEC. 2. The Constables elected in said districts, shall be subject to the provisions contained in the act contemplated in the second section of the act to which this is an amendment.

APPROVED, Feb. 6, 1835.

AN ACT to amend an act, entitled "An act to provide for the Election of Justices of the Peace and Constables." *In force Jan. 7, 1835.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the county commissioners' courts in the several counties of this State, be, and they are hereby authorized to increase the number of districts for the election of Justices of the Peace in their respective counties whenever they may deem the interest of the people require the same. *County commissioners authorized to increase the number of Justices districts in their respective counties. Manner of election.*

SEC. 2. The Justices elected in said districts, shall be elected in the manner, and be subject to the provisions contained in the act to which this is an amendment.

SEC. 3. That so much of the act, to which this is an amendment, as limits the number of Justice's districts to eight in each county, be, and the same is hereby repealed. *Acts repealed.*

APPROVED, Jan. 7, 1835.

NOTE. This and the preceding act are again inserted under the head of Justices of the Peace, &c.

AN ACT to amend "An act regulating Elections."

In force Jan. 29, 1835.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the county commissioners' courts of the several counties in this State, are hereby authorized to divide their respective counties into as many election precincts, for all general and special elections, as they may think expedient for the convenience of the voters of said county, and to appoint as many sets of judges of elections, to receive votes at the county seats, as they may think necessary. *County commissioners' courts of the several counties may divide the counties into election precincts at pleasure. May appoint constable to attend elections. His duty.*

SEC. 2. *Be it further enacted,* That it shall be the duty of said court, if they shall think proper, to appoint some constable to attend each precinct, and preserve order during said elections; and the said constable shall have authority to call to his aid a sufficient number of citizens to suppress any riot, or other disorderly conduct during said election, and there shall be paid to said constable, out of the County Treasury, a sum not exceeding one dollar a day for said services. All laws coming within the purview of this act, are hereby repealed. *Compensation. Acts repealed.*

This act to take effect from and after its passage.

APPROVED, Jan. 29, 1835.

*In force
7th Feb.
1837.* **AN ACT** making the clerks of the county Commissioners Courts and county treasurers, elective by the people.

*Clerks
county
com's.
courts elec-
tive, and
when elec-
tions to be
held,
& county
treasurer.
Term of
service.
To give
bond.* SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That an election shall be held on the first Monday in August next, and on the first Monday in August in the year one thousand eight hundred and thirty-nine, and on the first Monday in August, in every fourth year thereafter in each county in this State, for a clerk of the county commissioners court and county treasurer. The clerks and treasurer so elected, shall continue in office for four years, and until their successors shall be elected and qualified to office; and previous to their entering upon the duties of their respective offices, shall enter into bonds as is now required by law. Said securities to be approved by the county commissioners courts.

*When elec-
tion to be
held.* SEC. 2. The election provided for in this act, shall be held at the same places and conducted in all respects as is now provided for by the law regulating elections in relation to the election of county commissioners; and vacancies shall be filled in the same manner, *Provided*, Said courts may appoint a clerk and treasurer pro tempore, whose time of service shall continue until a clerk or treasurer shall be elected and qualified as provided for in this act.

*How vacan-
cies filled.* SEC. 3. In all contested elections of the before-mentioned officers, it shall be settled as provided in the act in relation to contested elections of sheriffs and coroners.

*Contested
elections.* SEC. 4. Every clerk or treasurer who shall neglect, or refuse to deliver over to their successors in office all papers, books, moneys, in their possession, as well as all and every thing appertaining to their respective offices, shall forfeit and pay any sum not exceeding five hundred dollars, and be imprisoned any time not exceeding thirty days, at the discretion of the court before whom such trial may be had, *Provided*, That if the county commissioners court on settlement with the county treasurer, shall find him in default, they may remove said treasurer from office, and appoint one in his stead who shall continue in office until his successor shall be elected and qualified.

*Papers &c.
to be deliv-
ered over.* SEC. 5. All laws and parts of laws authorizing the county commissioners courts to appoint clerks and county treasurers, be, and the same is hereby repealed, *Provided, however*, That the county commissioners court may for good cause to be spread of record remove their clerk and appoint another who shall continue in office until his successor be elected and qualified.

*On refusal
forfeiture
and impris-
onment.
Proviso.* APPROVED, 7th Feb., 1837.

*Laws re-
pealed.*

Proviso.

ENCLOSURES.

AN ACT to regulate the enclosing and cultivating of common fields. *In force
Feb. 23,
1819.*

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, and it is hereby enacted by the authority of the same, That those who are or shall be proprietors or owners of land, in any field that is now occupied, used, and declared, or that shall hereafter be occupied, used, or declared to be a common field, may meet together, by themselves or agents, annually, on the first Monday in March, or such other days as they shall appoint, at some convenient place by them appointed, for the purpose of making such rules and regulations as to them shall seem meet for the well ordering of the affairs, of such field with respect to fencing and cultivation, and all other things necessary for the well managing the same, for the common interest of such proprietors; in which meeting the proprietors of such field, shall have full power by their major vote, to be computed by interest, to order all such affairs and make such regulations, as they shall deem proper and expedient for the purpose aforesaid: *Provided, always*, That any person, who is a proprietor in any common field, may at any time hereafter, separate his, her, or their land, from such common field, by fencing the same, subject only to making and keeping in repair fences in like manner as persons having inclosures adjoining to the common fields, as by this law directed.

SEC. 2. That better to enable them to carry on and manage the affairs of such field, they are hereby authorized and empowered to elect a chairman, clerk, and treasurer, who shall be sworn to the faithful discharge of their duties, respectively; and the clerk shall enter and record all the acts, votes, and resolutions of the said proprietors relating to the management of the said common fields; and shall continue in his office until another shall be chosen and qualified to serve in his room; and that the election of chairman, clerk, and treasurer, shall be annually, or otherwise as shall be determined by the said proprietors, or a majority of them in their lawful meetings assembled.

SEC. 3. That for the better management of their common fields, they shall choose a committee of three persons, which shall be styled "the field committee," who shall be sworn to a faithful discharge of their duties; the said committee may call a meeting of the proprietors of such field, when they shall judge it needful, by giving warning to such of them as live in the town or village, verbally, where such fields lie, and to the agents, if any, of non-resident proprietors, ten days previous to the time of such meeting, or by warning such proprietors in such other manner as they shall, in their lawful meetings, agree upon.

SEC. 4. That the proprietors of common fields are hereby authorized and empowered, at their lawful meetings, to grant and levy taxes on themselves, when they shall judge it needful, according to their several interests in such fields, for defraying the charges that may arise in setting out and designating the proportion of, or alter-

ing the fence of such fields, in making gates and bridges, or for any other public or common charge, relating to such fields; and to appoint assessors and collectors for the making, apportioning, and collecting such taxes; which collectors shall have the same power and authority, in every respect, as the collectors of county taxes; which taxes, when collected, shall be paid into the hands of the treasurer, and shall be appropriated, by a majority of the proprietors for the common benefit.

SEC. 5. That the field committee shall point out and designate the place where, and the proportion which, each proprietor shall erect of such common fence, and every proprietor in such common field shall duly erect and maintain his, her, or their proportion in such common fence, according to the directions of such committee: *Provided*, such committee shall attend all orders, and comply with all regulations of the major part of the proprietors of such common field, for the improvement thereof, for the common benefit, under the penalties of such fines and forfeitures as shall be lawfully annexed to the breach or neglect of such orders or regulations.

SEC. 6. That any person or persons having his, her, or their part or proportion of common fence designated by the said field committee, shall have liberty, in order to make or repair the same, of passing over any person's lot or land whatsoever, whenever it shall be necessary, for the purpose aforesaid; and when it shall so happen that the line of fence, ordered as aforesaid, for the inclosing, or securing any common field, shall run in upon, or intersect the fence of any person making a particular inclosure adjoining the common field, the one half of the division fence between such particular inclosure, and the common field as aforesaid, shall be made and maintained by the proprietors of such common field, and the other half by the owner of such particular inclosure; and if any person or persons, whose land shall adjoin any such common field, shall neglect to keep in repair, and maintain his, her, or their part of such fence, after being requested thereto by the field committee, in writing, under their hands, for the space of ten days, it shall be lawful for the said committee to repair the said fence, at the proper charges of the delinquent; which expense, after being estimated by two reputable freeholders of the town or village wherein such fields are situated, may be recovered by action of debt, before any court having competent jurisdiction, together with costs.

SEC. 7. That if any person or persons, whose lands shall adjoin such common field, shall lay open the same, without giving two months notice thereof in writing, lodged with the clerk of such common field, such person or persons shall be liable to pay all damages that may accrue to the proprietors, or to any of them, of such common fields, to be recovered in any action of damages, before any court having competent jurisdiction.

SEC. 8. That all accounts for any services rendered any person acting under the appointment of, or by the direction of the major part of the proprietors of common fields, shall be paid out of the common treasury of such proprietors, after being audited by the field committee, except the accounts of such field committee, which last mentioned accounts shall be audited by a special com-

mittee; and that all orders on the treasurer shall be signed by the chairman, and attested by the clerk; and the collectors shall, for all or any moneys by them paid to the treasurer, demand duplicate receipts, one of which shall be held by the said collectors, and the other lodged with the clerk; the treasurer shall also demand duplicate receipts for all moneys paid by him, on orders on the treasury, one of which receipts shall be holden by the treasurer, and the other lodged with the clerk.

SEC. 9. That the proprietors of common fields shall have power, by their major votes, in lawful meetings assembled, to order all such fines and forfeitures, on either, or any of themselves, as to them shall seem reasonable, for carrying into effect any of their rules and regulations, for the common benefit of the said proprietors: *Provided, nevertheless*, That the penalty does not exceed the sum of five dollars, and that the person or persons thinking himself or themselves to be unreasonably or oppressively fined, shall have the right to appeal from the judgment of said proprietors to the next circuit court, holden for said county: *Provided*, That notice of such appeal shall be given within ten days after the judgment be given by the said proprietors.

SEC. 10. That the said common field shall be inclosed with a good and sufficient fence, according to law, on or before the first day of May in each and every year, or such other day as the said proprietors may appoint, and no cattle, horses, or other animals, shall be suffered to be put into such fields, for the purpose of depasturing therein, between the first day of May and the fifteenth day of November, in each and every year, or on such other day and time as the proprietors may agree upon, under the penalty of paying such fines as shall be ordered by the said proprietors, in lawful meeting assembled.

APPROVED, Feb. 23, 1819.

AN ACT regulating Inclosures.

*In force
Feb. 20,
1819.*

Be it enacted by the people of the State of Illinois, represented in the General Assembly, and it is hereby enacted by the authority of the same, For the better ascertaining and regulating of partition fences, it is hereby directed, that when any neighbors shall improve lands adjacent to each other, or when any person shall inclose any land adjoining to another's land already fenced, so that any part of the first person's fence becomes the partition fence between them, in both these cases the charge of such division fence, (so far as inclosed on both sides,) shall be equally borne and maintained by both parties to which, and other ends in this law mentioned, the county commissioners, yearly, and every year in the term next after the month of January, shall nominate, and are hereby required to nominate and appoint three honest, able men, for each township, who being duly sworn to the faithful discharge of the duties of their appointment, shall proceed, at the request of any person or per-

sons feeling him or themselves aggrieved, to view all such fence and fences, about which any difference may happen or arise ; and the aforesaid persons, or any two of them, in each township respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both or either party, and of the sufficiency of all fences, whether partition fences or others ; and when they shall judge any fence to be insufficient, they shall give notice thereof to the owners or possessors, and if any one of the owners or possessors, upon request of the other, and due notice given by the said viewers, shall refuse or neglect to make or repair the said fence or fences, or to pay the moiety of the charges of any fence before made, being the division or common fence, within twenty days after notice given, then, upon proof thereof before two justices of the peace of the respective county, it shall be lawful for the said justices to order the person aggrieved and suffering thereby, to make or repair the said fence or fences, who shall be reimbursed his costs and charges from the person so refusing or neglecting to make or repair the partition fence or fences aforesaid, or to order the delinquent to pay the moiety of the charge of the fence before made, being a division or common fence, as the case may be ; and if the delinquent shall neglect or refuse to pay the party injured the moiety of the charge of any fence before made, or to reimburse the costs and charges of making or repairing the said fence or fences, under the order aforesaid, then the same shall be levied upon the delinquent's goods and chattels, under warrant from a justice of the peace, by distress and sale thereof, the overplus, if any, to be returned to the said delinquent : *Provided*, That nothing herein contained shall be intended to prevent or debar any person or persons from inclosing his or their grounds, in manner they please, with sufficient walls or fences of timber, other than those heretofore mentioned, or by dikes, hedges, and ditches, all such walls and fences to be in height at least five feet from the ground ; and all dikes to be at least three feet in height from the bottom of the ditch, and planted and set with thorn, and other quickset, so that such inclosures shall fully answer and secure the several purposes meant to be answered and secured by this law : *Provided, also*, That such walls or fences of timber, other than those heretofore mentioned, and dykes, hedges, and ditches, shall be subject to all provisions, inspections, and restrictions, to which, by this law, any other inclosure or fence is made liable according to the true intent and meaning hereof.

APPROVED, Feb. 20, 1819.

AN ACT to amend "An act regulating Enclosures."

In force
Jan. 27,
1835.

Owners of animals breaking SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That if any horse, mare, gelding, colt, mule or ass, sheep, lamb, goat, kid, bull, cow, heifer, steer or calf, or any hog, shoat or pig, shall break into any per-

son's enclosure, the fence being good and sufficient, the owner of such animal or animals, shall be liable in an action of trespass, to make good all damages to the owner or occupier of the enclosures, for the first offence single damages only, and ever afterwards double the damages sustained.

SEC. 2. *Be it further enacted*, That the condition of the fence at the time the trespass was committed, may be proven upon trial, and that complaint made by the party injured before any justice of the peace of the county wherein such trespass shall be made, such justice is hereby authorized and required to issue a summons without delay to three respectable householders of the neighborhood, no ways related to either of the parties, nor interested concerning the trespass, reciting the complaint and requiring them to view the fence where the trespass is complained of, and their testimony, in such case, shall be good evidence touching the sufficiency of the fence.

SEC. 3. *Be it further enacted*, That if any person injured for want of such sufficient fence, shall hurt, wound, kill, lame or destroy, or shall cause to be hurt, wounded, killed, lamed or destroyed, by shooting, hunting with dogs or otherwise, any of the aforesaid animals, he or she so offending, shall satisfy or pay the owner of the same, the damages with costs, recoverable as aforesaid : *Provided*, That if the party liable to damages as aforesaid, in either case, will abide and pay what may be deemed reasonable by three neighbors, indifferently chosen to assess the same, it shall be a bar against such suit.

SEC. 4. *Be it further enacted*, That all animals trespassing, the owners of the same (if known) shall be notified thereof, and if they shall refuse to secure the said animals and prevent their trespassing, the persons on whom the trespass was committed, shall be authorized to secure the same, supplying the aforesaid animals with provender and water, for which they shall receive a compensation from said owner : *Provided*, That if said animals shall receive any abuse or damage from said persons, they shall be barred from any compensation for the aforesaid services.

SEC. 5. *Be it further enacted*, That the first and second sections of the act to which this is an amendment, be, and the same are hereby repealed.

This act to be in force after its passage.

APPROVED, January 27, 1835.

ESCHEATS.

AN ACT regulating Escheats.

In force
March 1,
1835.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That if any person shall die seized of any real or personal estate, without any devise thereof, and leaving no heirs or representatives capable of inheriting the

to rest in
the state.

Duty of
attorney
general or
state's at-
torney in
relation to
escheats.

Informa-
tion to be
filed.

Scire
facias.

Persons
named in
such infor-
mation
may appear
and plead.

If no per-
son shall
appear.

same, or the devisees thereof be incapable of holding the same, and in all cases where there is no owner of real estate capable of holding the same, such estate shall escheat to, and vest in the state.

SEC. 2. That when the attorney general or any state's attorney shall be informed, or have reason to believe that any real estate within his district, hath escheated to the state, by reason that any person hath died seized thereof, without devising the same, and leaving no heir capable of inheriting the same, or by reason of the incapacity of the devisee to hold the same, and such estate shall not have been sold according to law within five years after the death of the person last seized, for the payment of the debts of the deceased, or when he shall be informed, or has cause to believe that any such estate within his district, hath otherwise escheated to the state, it shall be his duty to file an information in behalf of the state, in the circuit court of the county in which such estate is situate, setting forth a description of the estate, the name of the person last lawfully seized, the names of the terre tenants and persons claiming such estate, if known, and the facts and circumstances, in consequence of which such estate is claimed to have escheated, and alledging that by reason thereof, the state of Illinois hath right by law to such estate: Whereupon such court shall award and issue a *scire facias* against such person or persons, bodies politic or corporate, as shall be alledged in such information, to hold, possess, or claim such estate, requiring them to appear and shew cause why such estate should not be vested in the state, at the next term of such court, which *scire facias* shall be served at least fifteen days before the return day thereof; and the court shall, moreover, make an order, setting forth briefly the contents of such information, and requiring all persons interested in the estate, to appear and shew cause, if any they have, at the next term of the said court, why the same should not be vested in the state: which order shall be published for six weeks successively, in some newspaper printed in this state, and in or nearest to the county in which such proceeding is had; the last insertion to be at least two weeks before the commencement of the term at which the parties are required to appear.

SEC. 3. That all persons, bodies politic, and corporate named in such information as terre-tenants, or claimants to the estate, may appear and plead to such proceedings, and may traverse or deny the facts stated in the information, the title of the state to the lands and tenements therein mentioned, at any time, on or before the third day of the return of such *scire facias*, and any other person claiming an interest in such estate, may appear and be made a defendant, and plead as aforesaid, by motion for that purpose, in open court, within the time allowed for pleading as aforesaid; and if no person shall appear and plead, or appearing shall refuse to plead within the time, then judgment shall be rendered, that the state be seized of the lands and tenements in such information claimed, but if any person shall appear, and deny the title set up by the state, or travers any material facts in the information, an issue or issues shall be made up and tried, as other issues of fact, and a survey may be ordered and entered as in other actions, where the title or boundary of lands are drawn in question; and if,

after the issues are tried, it shall appear from the facts found or admitted that the state hath good title to the lands and tenements in the information mentioned, or any part thereof, judgment shall be rendered, that the state be seized thereof, and recover cost of suit against the defendant.

SEC. 4. That when any judgment shall be rendered, that the state be seized of any land, tenements, or hereditaments, such judgment shall contain a certain description of such estate, and shall be effectual for vesting the title in the state; and a writ shall be issued, directed to the sheriff of the same county, commanding him to seize and take the lands, tenements, and hereditaments so vested in the state, into his hands, and upon the return of such writ of seizure, the attorney general, or state's attorney prosecuting such information, shall cause the record and process to be exemplified under the seal of the court, and deposit the same in the office of the auditor of public accounts, and shall also cause a transcript of the judgment to be recorded in the office of the recorder of the county in which the land lies; and such judgment shall preclude all parties and privies thereto, their heirs and assigns, so long as such judgment shall remain in force.

SEC. 5. That any party who shall have appeared to any proceeding as aforesaid, and the attorney general or state's attorney, on behalf of the state, shall respectively have the same right to prosecute an appeal, or writ of error upon any judgment as aforesaid, as parties in other cases.

SEC. 6. That the auditor of public accounts shall keep just and true accounts of all moneys paid into the treasury, and of all lands vested in the state as aforesaid; and if any person shall appear within ten years after the death of the intestate, and claim any money paid into the treasury as aforesaid, as heir or legal representative, such person may file a petition to the circuit court, as a court of chancery for the county in which the seat of government may be, stating the nature of his claim, and praying such money may be paid to him, a copy of which petition shall be served upon the attorney, who shall put in an answer to the same, and the court shall thereupon examine the said claim, and the allegations and proofs, and if they shall find that such person is entitled to any money paid into the treasury, such court shall, by an order, direct the auditor of public accounts to issue his warrant on the treasurer for the payment of the same, but without interest or costs; a copy of which order, under the seal of the court, shall be a sufficient voucher for the issuing such warrant. And if any person shall appear and claim any lands vested in the state, as aforesaid, within five years after the judgment was rendered, it shall be lawful for such person (other than such as were served with a *scire facias* or appeared to the proceeding their heirs or assigns,) to file his petition in the circuit court, (as a court of chancery,) of the county in which the lands claimed lie, setting forth the nature of his claim, and praying that the said lands may be relinquished to him, a copy of which petition shall be served on the attorney general, or state's attorney of the district, who shall put in an answer, and the court thereupon [shall] examine said claim, and the allegations and proofs; and if it shall appear that such person is entitled to the

Judgment
shall con-
tain a full
description
of the es-
tate and
shall vest
the title in
the state.

Appeals
and writs
of error.

Auditor
shall keep
an account
of moneys
paid into
the treas-
ury, and of
all lands
vested in
the state.

Persons
claiming
lands with-
in five
years after
judgment.

lands claimed, the court shall decree accordingly; which shall be effectual for divesting the interest of the state in or to the lands; but no costs shall be adjudged against the state; and all persons who shall fail to appear and file their petitions within the times limited aforesaid, shall be forever barred; saving however to infants, married woman, and persons of unsound mind, or persons beyond the limits of the United States, the right to appear and file their petitions as aforesaid, at any time within five years, after their respective disabilities are removed: *Provided, however,* that the general assembly may cause such lands to be sold at any time after seizure, in such manner as may be provided by law. In which case the claimants shall be entitled to the proceeds in lieu of the land, upon obtaining a decree or order as aforesaid.

Persons
under disa-
bilities.

APPROVED, March 1, 1833.

In force
Feb. 9,
1835.

AN ACT concerning Estrays.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That every person who shall take up any estray horse, mare or colt, mule or ass, shall, within ten days, take the same before some justice of the peace of the county where such estray shall be taken up, and make oath before such justice, that the same was taken up at his or her plantation, or place of residence in said county, and that the marks or brands have not been altered since the taking up. The said justice shall then issue his warrant to three disinterested housekeepers in the neighborhood, unless they can otherwise be had, causing them to come before him to appraise said estray, after they or any two of them being sworn to appraise such estray, without partiality, favor or affection, which appraisal, together with the marks, brands, stature, color, and age of such horse, mare or colt, mule or ass, shall be entered in a book to be kept by such justice, and certified under his hand, and transmitted to the clerk of the county commissioners' court of such county, within fifteen days after the same is taken up; and any person who shall take up any head of neat cattle, sheep, hog or goat, shall cause the same to be viewed by some housekeeper of the county where the same shall happen, and shall immediately go with such housekeeper before a justice of the county, and make oath before him as is required in taking up an estray horse, mare or colt, mule or ass, and then such justice shall take from such housekeeper, upon oath, a particular description of the marks, brands, color, and age of every such neat cattle, sheep, hog or goat, and said justice shall cause the said estrays to be appraised, in like manner, as is required to be done in case of a horse, mare or colt, mule or ass; which description and valuation shall be entered by such justice in a book to be kept by him as aforesaid, and by such justice transmitted to the clerk of the county commissioners' court of the county, to be by him kept as before directed:

Duty of
person tak-
ing up es-
trays.

Provided, That in all cases where the value of such neat cattle, sheep, goat or hog, does not exceed five dollars, said justice shall not be required to make a return to the clerk as aforesaid; but shall enter in his estray book the description and appraisal value of such sheep, hog or goat, and advertise the same in three of the most public places in his neighborhood; and every such clerk shall cause a copy of such description and valuation of every neat cattle, sheep, hog and goat, to be publicly affixed at the court house door of his county, within five days after the same shall be transmitted to him as aforesaid, for which he shall receive the same fee as for entering the same in a book: *Provided,* That if two or more estrays, of the same species, are taken up by the same person, at the same time, they shall be included in one entry and one advertisement, and in such case, such justice and clerk shall receive no more pay than for one of such species: *Provided, also,* that no person shall be allowed hereafter to take up and post any head of neat cattle, sheep, hog or goat, between the month of April and the first day of November, unless the same may be found in the lawful fence or inclosure of the taker up, having broken in the same; and for a reward of taking up, there shall be paid by the owner, one dollar for every horse, mare or colt, mule or ass; and for every head of neat cattle, fifty cents; and for every hog, sheep or goat, twenty-five cents, together with all reasonable charges.

SEC. 2. It shall be the duty of the clerk of the county commissioners' court, when the description and valuation of any estray horse, mare or colt, mule or ass, shall be transmitted to him by the justice as aforesaid, and in ten days thereafter, make out a copy thereof, and transmit the same to the public printer of the State, and endorse thereon, "Estray papers," together with the sum of one dollar, to pay the said printer; which sum the taker up is required to deposit with the clerk prior to the expiration of said ten days. It shall be the duty of the public printer to publish said advertisement, and transmit one copy of each number of his paper to each of the clerks of the county commissioners' court of the several counties of this State, free of charge, which shall be regularly filed by said clerks in their respective offices for the examination of those who may desire it.

Duty of
county
clerk.

SEC. 3. And if no owner appears and proves his property within one year after such publication, the property shall be vested in the taker up; nevertheless, the former owner may, at any time thereafter, by proving his property, recover the valuation money, upon payment of costs and all reasonable charges.

Owner
failing to
appear
within one
year,
property
vested in
taker up.

SEC. 4. And if any person shall trade, sell, or take away any such estray or estrays out of the State, for any purpose whatever, before the expiration of said one year, he or she so offending, shall be liable to indictment in the circuit court of the proper county, and on conviction thereof, shall be fined in a sum double the value of the property, one half to the owner thereof, and the other half to the county treasury; and when the owner of any estray head of neat cattle, sheep, hog or goat, does not prove his property within twelve months after the same has been published at the door of the court house as aforesaid, and when the valuation

Penalty for
selling es-
trays out of
the state.

does not exceed five dollars, the property shall be vested in the taker up ; but when the valuation shall exceed five dollars, and no owner appears within the time aforesaid, the property shall also be vested in the taker up ; nevertheless, the former owner may, at any time, by proving his property, recover the valuation thereof, upon payment of all reasonable costs and charges ; and if the taker up and the owner cannot agree upon the charges, they shall call upon three disinterested householders, whose decision shall be binding on both parties ; and it shall not be lawful for any person to take up any estray, (except such as shall be hereinafter excepted,) unless he shall be a freeholder or a housekeeper. Any person finding an estray horse, mare or colt, running at large without any of the settlements of this State, may take up the same, and shall immediately take such estray or estrays before the nearest justice of the peace, and make oath that he has not altered the marks or brands of such estray, since taking up ; and if such taker up shall be a freeholder or housekeeper within that county, it may, and shall be lawful for him, to post such estray or estrays as hereinbefore directed in this act, as if the same had been taken up on his plantation or place of residence ; and when the taker up shall not be qualified as aforesaid, he shall take the oath before required, and deliver such estray or estrays, to the said justice, who shall cause the same to be dealt with as directed by this act ; but if no owner appears to prove his property within one year, such estray or estrays shall be sold to the highest bidder giving public notice of such sale twenty days previous thereto, the purchaser giving a bond and approved security, payable to the county commissioners' court of the county where such estray shall be taken up, and after paying the taker up all reasonable charges, the balance shall be put into the county treasury by the said justice, who shall take a receipt for the same from the county treasurer ; nevertheless, the former owner, at any time within two years after taking up, by proving his property before the clerk of the county commissioners' court of said county, or before the justice of the peace before whom the property was taken up, and obtaining a certificate thereof from the clerk of said court or justice of the peace, to the treasurer shall receive the balance aforesaid.

SEC. 5. And when any justice of the peace shall fail to pay any money for any estray or estrays to be sold agreeably to this act, into the county treasury, within three months after selling such estray or estrays, such justice shall forfeit and pay the sum of twenty dollars, with costs, to be recovered by action of debt, before any justice of the peace of the county, or other court having jurisdiction thereof, the one half for the use of the county, and the other half for the use of any person suing for the same ; and moreover, be liable to pay the price of such estray or estrays, with interest thereon.

SEC. 6. If any estray or estrays, taken up as aforesaid, shall die or get away before the owner shall claim his or her right, the taker up shall not be liable for the same ; and if any person shall take up any estray or estrays, at any other place within the inhabited parts of this State than his or her plantation or place of residence, or without being qualified as required by this act, he shall

Persons taking up estrays shall be householders. Unless found without any settlement.

Shall be sold and

Charges of taker up to be paid out of the proceeds. Balance paid into the county treasury.

Penalty for justice not paying over such balance.

Taker up not liable for escapes. Penalty for persons taking other than on their

forfeit and pay the sum of ten dollars, with costs, recoverable before any justice of the peace of the county where the offence shall have been committed, and not having property sufficient to pay such fine, he shall be liable to be confined one month in the jail of the county where he may be found, being found guilty of such offence according to law ; and any person taking up any estray or estrays out of the limits of the settlements of this State, and failing to comply with the requisitions of this act, shall be liable to the same penalties ; and if any person, taking up any estray or estrays, of any species, fails to comply with the requisitions of this act, he shall, for every such offence, forfeit and pay to the informer, the sum of ten dollars, with costs, recoverable before any justice of the county where such offence shall be committed ; one half to the use of the county, and the other half to the use of the person suing for the same.

SEC. 7. That if any person or persons shall hereafter stop, or take up any keel or flat boat, ferry flat, batteau, perogue, canoe, or other vessel or water craft, or raft of timber, or plank, found adrift on any water course within the limits, or upon the borders of this State, and the same shall be of the value of five dollars or upwards, it shall be the duty of such person or persons, within five days thereafter, (provided the same shall not before that time be proven and restored to the owner,) to go before some justice of the peace of the proper county, and make affidavit in writing, setting forth the exact description of such vessel or craft, when and where the same was found, whether any, and if so, what cargo was found on board, and that the same has not been altered or defaced, either in whole or in part, since the taking up, either by him, her or them, or by any other person or persons, to his, her or their knowledge ; and the said justice shall thereupon issue his warrant, directed to some constable of his county, commanding him forthwith, to summon three respectable householders of the neighborhood, if they cannot otherwise be had, whose duty it shall be, after being sworn by said justice, to proceed without delay, to examine and appraise such boat or vessel, and cargo, if any, and make report thereof, under their hands and seals, to the justice issuing such warrant, who shall enter such appraisement, together with the affidavit of the taker up, at large in his estray book ; and it shall be the further duty of said justice, within ten days after the said proceedings shall have been entered in his estray book as aforesaid, to transmit a certified copy thereof to the clerk of the county commissioners' court of his county, to be by him recorded in his estray book, and filed in his office.

SEC. 8. In all cases where the appraisement of such boat or water craft, including her cargo, shall not exceed the sum of twenty dollars, the taker up shall advertise the same on the door of the court house, and in three of the most public places in the county, within ten days after the justice's said certificate shall have been entered on the records of the county commissioners' court, and if no person shall appear to prove and claim such boat or water craft, within six months from the time of taking up as aforesaid, the property in the same shall vest in the taker up ; but if the value thereof shall exceed the sum of twenty dollars, it shall be the duty

own plantation.

How recovered.

Duty of takers up of water craft.

Where the value thereof does not exceed twenty dollars.

Where it does exceed twenty dollars.

of the clerk of the county commissioners' court, within twenty days from the time of the reception of the justice's said certificate at his office, to cause an advertisement to be set up on the door of the court house, and also a notice thereof to be sent to the public printer as aforesaid, who shall publish the same as aforesaid; and if the said vessel be not claimed and proven within six months from said advertisement, the same shall be vested in the taker up; nevertheless, the former owner may, at any time thereafter, recover the valuation money by proving his property, allowing to the taker up a reasonable compensation for his trouble, and costs and charges.

Fees of the different officers in estray cases

SEC. 9. In all cases where services shall be performed by any officers or other person or persons under this act, the following fees or compensation shall be allowed, to wit: To the justice of the peace for administering oath to the taker up or finder, making an entry thereof, with the report of the appraisers, and making and transmitting a certificate thereof to the clerk of the county commissioners' court, fifty cents; to the clerk or justice for taking proof of the ownership of, and granting a certificate of the same, twenty-five cents; for registering each certificate transmitted to him by any justice as aforesaid, twelve and a half cents; for advertisements, including the newspaper publications, fifty cents in addition to the cost of such publication; to the constable for each warrant so served on appraisers, twenty-five cents; and to each appraiser the sum of twenty-five cents; which said fees shall be paid by the taker up to the person entitled thereto, whenever said services shall be rendered. All which costs and charges shall be reimbursed to the taker up or finder, in all cases where restitution of the property shall be made to the owner, in addition to the reward to which such person may be entitled for taking up as aforesaid.

SEC. 10. If any person shall act contrary to the duties enjoined by this act, for which no penalty is herein before pointed out, the person so offending shall, on conviction thereof, forfeit and pay for every such offence, not less than five nor more than one hundred dollars, to be sued for in the name of the proper county, before any justice of the peace or other court having cognizance thereof.

Act repealed.

SEC. 11. The following acts, viz: "An act concerning water crafts found adrift, lost goods, and estray animals," approved, Jan. 31st, 1827; and "An act to amend an act concerning water crafts found adrift, lost goods, and estray animals," approved, January 22d, 1829; and also, "An act to amend an act entitled an act concerning water crafts found adrift, lost goods, and estray animals," approved, February 14, 1831, be, and the same are hereby repealed; but rights acquired and liabilities incurred under the acts hereby repealed, are not affected or impaired by this act.

APPROVED, Feb. 9, 1835.

EVIDENCE.*

AN ACT declaring what shall be Evidence in certain cases.

In force Jan. 10, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the printed statute books of this state and of the late territories of Illinois and Indiana, printed under the authority of said state and territories, shall be evidence in all courts and places of the private acts therein contained.

The printed statutes, evidence.

SEC. 2. The printed statute books of the several states and territories of the United States, purporting to be printed under the authority of those states and territories, shall be evidence in all courts and places, of the legislative acts of those states and territories respectively.

Also those of the U. S.

SEC. 3. Copies of the proceedings and judgments before justices of the peace, certified by the justice or justices under his or their hands or seals, before whom such proceeding or judgment is had, shall be received as evidence of such proceeding or judgment.

Copies of proceedings before justices of the peace.

Where such certified copy is to be used as evidence in any county other than that in which the justice or justices so certifying shall reside, the same shall not be received as evidence, unless a certificate from the clerk of the county commissioners' court, (with the seal of the court,) shall be annexed thereto, certifying that on the day on which such proceeding was had, or judgment rendered, such justice so granting the same, was a justice of the peace, duly commissioned and sworn.

SEC. 4. The official certificate of any register or receiver of any land office of the United States, to any fact or matter on record in his office, shall be received in evidence in any court in this state, and shall be competent to prove the fact so certified. The certificate of any such register of the entry or purchase of any tract of land within his district, shall be deemed and taken to be evidence of title in the party who made such entry or purchase, or his heirs, or assigns, and shall enable such party, his heirs, or assigns, to recover the possession, of the land described in such certificate, in any action of ejectment or forcible entry and detainer, unless a better legal and paramount title be exhibited for the same.

Official certificates, when evidence.

SEC. 5. An exemplification by the secretary of this state of the laws of the other states and territories, which have been, or shall hereafter be transmitted by order of the executive or legislatures of such other states or territories, to the governor of this state, and by him deposited in the office of said secretary, shall be admissible as evidence in any court of this state.

Of secretary of state.

SEC. 6. Every justice of the peace hereafter to be sworn into office, shall take the oaths required by law, before the clerk of the commissioners' court of the proper county, who is hereby authorized to administer the same, and who shall certify the same upon the commission. The said clerk shall keep a book in which he shall enter the name of every justice of the peace sworn into of-

Of commissioners' clerk when evidence.

* See title "Advertisements."

vice by him, together with the date of his commission, and the time when he was sworn into office; resignations of the office of justice of the peace shall be made to the clerk of the commissioners' court of the proper county, who shall immediately enter the date of every such resignation in the book above provided for; which book, or a certified copy of an entry in the same, shall be received as evidence in all courts within this state.

SEC. 7. The act entitled, "An act rendering authentic as evidence in the courts of this state, the public acts, records, and judicial proceedings of the courts in the United States," approved, February 20, 1819; and the act entitled "An act relating to evidence in courts of justice," approved, January 28, 1823, are hereby repealed.

APPROVED, Jan. 10, 1827.

FEES.

AN ACT regulating the Salaries, Fees, and Compensation of the several officers and persons therein mentioned.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the salaries, fees, and compensation of the several officers and persons hereinafter mentioned, are established as follows, to wit:*

Salaries.

SALARIES, &c.

To the governor, per annum,	\$1000
The secretary of state, exclusive of fees, per annum,	600
The auditor of public accounts, inclusive of clerk hire, per annum,	1200
The state treasurer, inclusive of clerk hire, per annum,	800
The chief justice and each of the associate justices of the supreme court, respectively, per annum,	800
The attorney general, per annum,	350
Each circuit attorney, per annum,	250
The adjutant general, per annum,	100
All of which salaries shall be paid to the persons entitled thereto, in quarter yearly instalments, on the warrant of the auditor, out of any moneys in the treasury not otherwise appropriated.	

Compensation to members, &c. of the general assembly.

SEC. 2. Compensation of the members of assembly, &c.	
There shall be allowed to the speaker of the senate and house of representatives, respectively, at the present session, per day,	4
To each member of the senate and house of representatives, at the present session, per day,	3

To each speaker and member, in addition for every twenty miles' travel in going to, and returning from the place of session,	3
To the secretary of the senate, and principal clerk of the house of representatives, respectively, per day,	5
To the enrolling and engrossing clerks of the senate and house of representatives, respectively, per day,	4
To the door keeper of the senate and house of representatives, respectively, per day,	3

And the said compensation, when due to the officers and members of the senate as aforesaid, shall be certified by the secretary thereof, with the exception of his own compensation, which shall be certified by the speaker; and the compensation that may be due to the officers and members of the house of representatives, shall be certified by the principal clerk thereof, and that of the clerk, by the speaker; which said certificates, when made out as aforesaid, shall be sufficient evidence to the auditor of each person's claim, respectively, who shall issue his warrant on the treasury for the amount to which such person shall be entitled as aforesaid, to be paid out of any moneys in the treasury not otherwise appropriated.

INCIDENTAL EXPENSES, &c.

SEC. 3. The incidental expenses of the offices of the auditor of public accounts, state treasurer, and secretary of state, shall include postage on all public papers sent to or from said offices relative to the business thereof, furniture for the same, the necessary fuel, and all such books, blanks, and other stationery as shall be considered necessary for the convenient transaction of business in said departments respectively.

SEC. 4. For the purpose of defraying the incidental expenses aforesaid, it shall be the duty of said officers respectively, from time to time, as said expenses may be incurred, to lay proper vouchers for the same before the governor, whose duty it shall be, if such accounts shall appear to be reasonable, to allow the same, and to certify the amount thereof to the auditor, who shall thereupon be required to issue his warrant for the same, to the person entitled thereto; to be paid out of any moneys in the treasury not otherwise appropriated.

SECRETARY OF STATE'S FEES.

SEC. 5. There shall be allowed to the secretary of state, in addition to his salary, the following fees, to wit:	
For copies or exemplification of records, for every seventy-two words,	15
Affixing state seal, with certificate of authentication,	1 00
Copy of any law, for every seventy-two words,	15

Official certificate without seal, when not required for public use, 25
Provided, That he shall in no case be entitled to any fees whatever, when any services are performed for the state, in discharge of the duties of his office.

JUDGE OF PROBATE'S FEES.

Taking proof of a last will or testament, 50
 Endorsing certificates of probate thereon, 12½
 Recording last will and testament, for every seventy-two words, 15
 Issuing letters testamentary or of administration, affixing seal thereto, and recording the same, 1 50
 Taking bond of the executor or administrator, 75
 Administering oath to each executor or administrator, 12½
 For each citation, 25
 Taking and filing renunciation of the widow or next of kin, 25
 Taking proof of a codicil, proved separately, 50
 Endorsing certificate of probate on codicil, 12½
 Recording the same, for every seventy-two words, 15
 Examining and approving each inventory, sale bill, or account current, filed by executors or administrators, 50
 Entering the settlement of executors or administrators on the order book, 75
 Each copy of the settlement of executors or administrators, with certificate and seal, 1 00
 For each decree, limiting the time for exhibiting the claims of creditors, 25
 For each order of distribution, 50
 For each order on an executor or administrator to pay out of the estate to creditors, in proportion to their debts, 25
 For copies of exemplifications of records, every seventy-two words, 15
 Official certificate and seal, 50
 Making out order for publication, 25
 For allowing an appeal to the circuit court, 25
 For issuing each special writ or summons with seal, 25

FEES OF THE CLERK OF THE SUPREME COURT.

For each writ of error and seal, with supersedeas, 1 00
 For each writ of error and seal, without supersedeas, 75
 For each bond, when not furnished by the party, 50
 Filing each paper, excepting records and papers on appeals and writs of error, 6¼
 Filing each record and accompanying papers, on appeals and writs of error, as returned by the inferior courts, 20
 Docketing cause, 12½
 Entering each rule or order of court, each entry being

considered as one order, 25
 Execution and seal, 50
 Entering sheriff's return on any writ or execution, 12½
 For each subpoena and seal, 50
 For each scire facias, mandamus, and other special process, for every seventy-two words, 18
 Sealing the same, 25
 Bringing any particular record into court of a suit, matter, or thing not before the court, 25
 Copy of a record or other proceedings, for every seventy-two words, 15
 Entering judgment or decree, for every seventy-two words, 18
 Entering each continuance from one term to another, 12½
 Making complete record when directed by the party, for every seventy-two words, 15
 For each official certificate and seal, other than to the process of the court, 50
 Each official certificate, as aforesaid, without seal, 25
 Entering attorney on the roll, administering oath, and certifying the same, 1 00
 Making bill of costs for execution, and entering the same in the cost book, 37½
 Copy of the same when requested by either party, 25
 Administering each oath, 12½

*CLERKS' FEES IN THE CIRCUIT COURTS.

For each capias, summons, subpoena, and other process not herein specified, and sealing the same, 50
Provided, That only one subpoena shall be charged for every four witnesses, unless actually made out on request in writing.
 For filing each paper in the progress of a suit, and appertaining to the same, excepting papers on appeal from justices of the peace, 6¼
 Filing the papers on appeals from justices of the peace, taking appeal bond and issuing injunction thereon, 50
 Taking bond for costs, 25
 Filing and opening each deposition, 12½
 Entering each suit on the docket for trial, 12½
 Entering each order or rule of court for continuance, default to plead, or any order actually entered in the progress of a suit, and counting the whole as one entry, 25
 For each discontinuance, retraxit, or non suit, 25
 For each dedimus or commission to take depositions, 50
 Bringing any particular record into court of a suit, matter, or thing, not properly before the court, 25
 Calling and swearing each jury, 18¼
 Swearing each witness on the trial of a cause, 6¼

Swearing any person to an affidavit,	12½
Receiving and entering the verdict of a jury,	12½
Entering each decree or final judgment in a cause,	25
Issuing each writ of <i>habeas corpus</i> , <i>certiorari</i> , or <i>procedendo</i> ,	50
Assessing the damages on any bond, note, or other instrument for the payment of money, by order of the court, and making a report thereof in writing,	25
Entering special bail on record, in each case,	25
Making a list of jurors when requested,	12½
Swearing constable to take charge of a jury,	6¼
Issuing execution,	50
Docketing the same,	12½
Entering sheriff's return on each execution,	12½
Entering satisfaction of judgment,	25
Entering the report of commissioners or referees, or the award of arbitrators, and all other special entries, for every seventy-two words,	12½
For each official certificate and seal, other than the process of the court,	50
Taking bond in cases of foreign or domestic attachment,	50
Taking injunction bond in chancery,	50
Taking bond in cases of appeal to the supreme court,	50
Entering appearance of attorney but once in each suit,	12½
Entering plaintiff's or defendant's appearance, but once in each cause,	12½
For each attachment for a witness, or other person,	50
For each <i>venire facias</i> , or a jury warrant, when actually issued,	37½
Making bill of costs for each execution, and entering the same of record, being one charge,	37½
Copy of same, when requested by either party,	25
Making complete record of proceedings and judgment, when directed by the court, for every seventy-two words,	12½
Copy of bill, answer, declaration, pleadings, judgment, or other proceeding, for every seventy-two words,	12½
Certifying and sealing the same when requested in writing,	50
For each commission, <i>scire facias</i> , or other special writ or process, and sealing the same, for every seventy-two words,	15
Taking depositions when requested, for every seventy-two words,	12½
Taking acknowledgment of a sheriff's deed,	25
Entering the acknowledgment of the sheriff to a deed, when made in open court,	25
Administering oath of naturalization,	25
Making entry of naturalization of record, for every seventy-two words,	15
Taking each recognizance, and entering the same,	37½
Arraigning prisoner at the bar,	50
Entering the pleadings in a criminal cause,	25

For each copy of an indictment, when requested, for every seventy-two words,	15
Entering judgment of conviction,	25
Entering discharge of recognizance,	12½
For a copy of the list of grand or petit jurors, when requested, in a criminal cause,	25
For swearing jurors, witnesses, and all other persons, the same fees shall be allowed as in civil cases: and in all criminal cases, where the defendant shall be acquitted, or otherwise legally discharged without payment of costs, the clerk shall receive such compensation, as the county commissioners shall order, not exceeding thirty dollars per annum.	

CLERKS' FEES IN THE COUNTY COMMISSIONERS' COURT.

For each writ, summons, subpoena, or other process, with seal,	50
Filing each paper,	6¼
Entering each order of court,	12½
Administering each oath,	6¼
Each certificate and seal to any paper, other than to process,	50
Official certificate without seal,	25
For each license, and taking bond for a ferry, toll bridge, or turnpike road,	1 00
For each tavern license, and taking bond,	1 00
For each marriage license,	1 00
For each copy of rates for a ferry, toll bridge, turnpike road, or tavern,	25
Filing and recording marriage certificate,	12½
Making each bill of costs, and copy,	25
For each writ of <i>ad quod damnum</i> ,	50
For copies of all records and proceedings, when made out on request, for every seventy-two words,	12½
Taking depositions when requested, for every seventy-two words,	12½
For taking proof in cases of estrays, and granting certificate of the same,	25
For registering each certificate transmitted to him by a justice of the peace, in cases of estrays,	12½
For advertisements in such cases, including the copy for newspaper publication,	50
For trying and sealing weights and measures by the county standard,	12½
<i>Provided</i> , That no fees herein allowed shall be charged for services rendered the county: but the county commissioners' court shall, from time to time, allow their clerk such reasonable compensation per day, at each session, as they may judge proper for his services.	

FEEs OF THE ATTORNEY GENERAL AND CIRCUIT ATTORNEYS.

For each conviction in a criminal cause, where the crime is infamous, and the offender subject to corporeal punishment,	10
For each conviction where the crime is not infamous, and the defendant is subject to fine or imprisonment only,	5

FEEs OF THE SUCCESSFUL PARTY AT LAW.

There shall be allowed to the successful party in each civil action in the circuit and supreme court, the following docket fees, to wit :

In each suit in which the title to lands shall come in question,	5 00
In each suit where the title to lands does not come in question,	2 50
In each chancery suit,	5 00

Which said fees shall be taxed in the bill of costs against the unsuccessful party, whether plaintiff or defendant : *Provided*, That not more than one docket fee shall be taxed against the same person in any one cause in the same court.

SHERIFF'S FEEs.

For serving a writ or summons on each defendant,	50
Taking special bail,	25
For serving a subpoena on each witness,	25
For summoning jury, (grand jury excepted,) each case,	50
Advertising property for sale,	25
Returning each writ or other process,	12½
Mileage for each mile of necessary travel, to serve any such writ or process as aforesaid, calculating from the place of holding the court, to the place of residence of the defendant or witness, for going only,	6¼
Calling the jury in each cause,	12½
For levying an execution,	50
Returning the same,	12½
Serving and returning a <i>scire facias</i> to revive a judgment, to foreclose a mortgage, or against bail,	62½
For committing each person to jail,	37½
Discharging each person out of jail,	37½
Dieting each prisoner per day,	37½
For attending before a judge with a prisoner, on a writ of <i>habeas corpus</i> ,	1 00
For each mile of necessary travel in taking such prisoner before the judge as aforesaid,	6¼
Serving a writ of possession, with the aid of the <i>posse comitatus</i> ,	2 00
Serving the same without such aid,	1 00

Mileage in either case, for each mile of necessary travel from the place of holding court to the place where such is served, for going only,	6¼
Executing a writ of <i>ad quod damnum</i> , attending the inquest, and returning the writ with the verdict of the jury,	2 00
For summoning a jury in a case of forcible entry and detainer, and attending the trial,	2 00
For attending the circuit and county commissioners' courts, to be allowed and paid out of the county treasury,	1 00
For summoning each appraiser to value property,	25
For swearing each appraiser when summoned,	6¼
For executing and acknowledging a deed, on sale of real estate,	1 50
For making certificate of sale previous to the execution of the deed,	25
For taking a replevin, replevy, or forthcoming bond,	50
For taking each bail bond or recognizance in a criminal cause, when required by law,	50
For executing a <i>capias</i> on a defendant in a criminal cause, where the offence is infamous,	1 00
For executing a <i>capias</i> where the offence is not infamous,	50
Mileage for each mile of necessary travel from the place of holding court to the place of making the arrest,	6¼
Serving a declaration in ejectment on each defendant, and making affidavit of service,	62½
Mileage for each mile of travel, from the place of holding court to the place of residence of such defendants,	6¼
For conveying each prisoner from his own county to the jail of a foreign county, for each mile of travel, going only,	10
For committing each prisoner to jail under the laws of the United States, to be paid by the marshal, or other person requiring his confinement,	37½
Dieting such prisoner per day,	37½
For each month's use of the jail during the confinement of such prisoner, to be advanced as aforesaid, and paid into the county treasury,	50
For discharging such prisoner,	37½

In addition to the above fees, there shall be allowed to the several sheriffs in this state, a commission of five per centum on the amount of all sales of real and personal estate, which shall be made by virtue of any execution issued in pursuance of law, where the money arising from such sales shall not exceed the sum of two hundred dollars ; but in all cases where the amount of any such sale shall exceed that sum, a commission of two and a half per centum on the excess only shall be allowed : *Provided*, That in all cases where the execution shall be

See act of Jan. 23, 1829.

settled by the parties, replevied, stopped by injunction, or paid, or where the property levied upon shall not be actually sold, only one half of the above commission shall be charged. And no other fees or compensation whatever shall be allowed on any execution, except the necessary expenses for keeping perishable property, to be ascertained and allowed by the court out of which the same shall have issued. In all cases where any of the sheriffs in this state shall be required by law to execute any sentence of punishment, other than imprisonment, for which no fee is allowed by this act, it shall be the duty of the county commissioners' court of the proper county to allow a reasonable compensation for the same, to be paid out of the county treasury. It shall be the duty of each sheriff, entitled to mileage under this act, to endorse on each writ, summons, subpoena, or other process, that he may execute, the distance he may travel to execute the same, ascertaining the distance, and the charge properly allowable therefor, in conformity with the foregoing regulations. In all criminal cases where the defendant shall be acquitted, or otherwise legally discharged, without payment of costs, the sheriff shall not be allowed any fees; but the commissioners' court shall annually allow the sheriff such compensation for ex-officio services, not exceeding thirty dollars, as they shall think proper.

CORONER'S FEES.

For holding an inquest over a dead body, when required by law,	5 00
For summoning the jury,	75
For burial expenses, &c.,	10 00

All of which fees shall be certified by the coroner, and paid out of the county treasury, when the same cannot be collected out of the estate of the deceased. And whenever the coroner shall be required by law to perform any of the duties appertaining to the office of sheriff, he shall be entitled to the like fees and compensation, as shall be at the time being, allowed by law to the sheriff for the performance of similar services.

JUSTICE'S FEES IN CRIMINAL CASES.

For taking each complaint in writing, under oath,	25
For taking the examination of the accused, and the testimony of witnesses in cases of felony, and returning the same to the circuit court, for every seventy-two words,	12½
For each warrant,	25
Taking recognizance, and returning the same,	50
For each subpoena,	25
Administering each oath,	6½
For each jury warrant in a trial of assault and battery,	25

For entering the verdict of the jury,	12½
For each order or judgment thereon,	25
For each mittimus,	25
For each execution,	25
For entering each appeal,	25
For transcript of judgment and proceedings in cases of appeal,	50
But in all cases where the defendant shall be acquitted, or otherwise legally discharged, without the payment of costs, the justice shall not be entitled to any fees.	

JUSTICE'S FEES IN CIVIL CASES.

For every warrant, summons or subpoena,	18½
For each continuance,	12½
Administering an oath,	6½
Issuing dedimus,	25
Taking each deposition when required, for every seventy-two words,	12½
Entering judgment,	5
Issuing execution,	25
Entering security on docket,	25
Scire facias to be served on security,	25
Notification to each referee,	25
Entering the award of referees,	37½
Entering appeal from justice's judgment,	25
For each transcript of the judgment and proceedings before the justice on appeal,	25
Issuing process of attachment, and taking bond and security,	75
Entering judgment on the same,	25
Docketing each suit,	12½
Taking the acknowledgment or proof of a deed or other instrument of writing,	25
For each precept, on forcible entry and detainer,	50
On trial, per day,	2 00
Making complete copy of proceedings thereon,	2 00
For each jury warrant,	25
For each marriage ceremony performed,	1 00
For each certificate thereof,	25
For administering the oath to the finder or taker up in cases of estrays, &c. making an entry thereof, with the report of the appraisers, and making and transmitting a certificate thereof to the clerk of the county commissioners' court,	50

CONSTABLES' FEES IN CRIMINAL CASES.

For serving a warrant on each person named therein,	25
Mileage, to be computed from the office of the justice who may have issued the same, to the place of service, for each mile,	6½
Serving each subpoena,	12½

Mileage from the justices' office to the residence of the witness, per mile,	6½
Taking each person to jail when committed,	25
Mileage from the justices' office to the jail, per mile,	6½
For summoning jury in case of assault and battery,	50
But in all cases where the defendant shall be acquitted, or otherwise discharged, without the payment of costs, the constable shall not be entitled to any fees.	

CONSTABLES' FEES IN CIVIL CASES.

Serving and returning each warrant or summons,	25
Serving and returning each subpoena,	12½
Serving and returning execution,	50
Advertising property for sale,	25
Commission on sales not exceeding ten dollars, ten per centum; and on all sales exceeding that sum, six per centum.	
Attending trial before a justice in each jury cause,	25
Serving jury warrant in each case,	50
Each day's attendance on the circuit court, when required to be paid out of the county treasury,	1 00
Mileage, when serving a warrant, summons, or subpoena, from the justice's office to the residence of the defendant or witness, per mile,	5
For serving warrant on appraisers in cases of estrays, &c.	25

WITNESSES' FEES.

Every witness attending in his own county, on trial, per day,	50
Attending in a foreign county, going and returning, per day, accounting 20 miles for each day's travel,	1 00
Every witness, when attending for the purpose of having his deposition taken, per day,	50
<i>Provided</i> , That no allowance or charge shall be made for the attendance of witnesses, as aforesaid, unless the witness shall make affidavit of the number of days he or she actually attended; and that such attendance was at the instance of one or both of the parties, or his, her, or their attorney.	

JURORS' FEES.

To every juror sworn in each civil action in the circuit court,	25
To each juror sworn in a civil case, before a justice of the peace,	25
For attending an inquest over a dead body, when summoned by the coroner, to be paid out of the county treasury,	25

ARBITRATOR'S FEES.

To each arbitrator for every day he shall be necessarily employed in performing the duties of his appointment, where the award is to be made the judgment of the circuit court,	2 00
For every arbitrator or referee, for each day he shall be necessarily employed in making up his award in cases before justices of the peace,	1 00

RECORDERS' FEES.

For recording all deeds, mortgages, and other instruments of writing, for every 100 words,	15
For copies of the same, when requested, for every 100 words,	12½
For every search of record,	12½
Official certificate with seal, when requested,	37½
For each certificate, without seal,	25

See act of Jan. 23, 1829.

FEES OF NOTARIES PUBLIC.

For noting a bond, promissory note, or bill of exchange for protest,	25
For protesting and recording the same,	50
For noting without protest,	25
For notice to endorsers, &c. each,	25
For affixing the seal notarial,	25
For each certificate,	25

COUNTY SURVEYORS' FEES.

For establishing each quarter section of land,	2 50
For establishing each half-quarter section of land,	2 00
For each town lot over ten, and not exceeding forty in number,	37½
For each town lot over forty, and not exceeding one hundred,	25
For each lot over and above one hundred,	18½
For laying off land, under a writ of <i>ad quod damnum</i> , and each surveyor shall be allowed the sum of two dollars per day in full compensation for travelling expenses, when necessarily engaged in the discharge of the duties of his office.	2 50

FEES FOR GUARDING JAIL.

To each man, for every twenty-four hours guarding jail when required, on producing the jailer's, sheriff's, coroner's, or justice's of the peace certificate of the same, to be paid out of the county treasury,	1 00
And to the end that all persons chargeable with the fees aforesaid, due to the several above named officers, (except such as are	

Officers to present a fee bill. to be paid by the respective counties,) may certainly know for what the same are charged, none of the fees herein before mentioned, shall be payable to any such officer, until a bill of the same shall have been presented to the person chargeable with the same, stating the particulars of the said bill, and signed by the officer to whom the same are payable; or until a fee bill shall have been issued by the clerk, as hereinafter provided.

Penalty for taking illegal fees. SEC. 7. If any or either of the aforesaid officers shall charge, claim, demand, exact, or take any other or greater fees than are herein before set down and allowed for any of the services specified in this act; or shall charge, demand, or take any of the said fees when the services for which such fees are charged, shall not have been actually performed, such officer shall pay to the party injured two dollars for every item so charged and exacted; to be sued for and recovered in any court having cognizance of the same: *Provided, always,* that if any person against whom any fee bill, within this act, shall be charged, shall conceive himself or herself aggrieved by any such charges, that the same is overcharged, or contains charges for services not actually rendered by such officer, it shall be lawful for such person, after paying the same, or having replevied the said fee bill, by giving bond, with sufficient security, to pay the same at the next ensuing circuit court of his county, (and it shall be the duty of the sheriff, or other officer, to take such bond and allow said replevin,) to present the said fee bill to the circuit court of the county where the person so charged therewith shall reside; whose duty it shall be to inspect the said fee bill; and if it appear, that any item or charge is contained in said fee bill not authorized by law, or for services not actually rendered, the said judge shall proceed to quash such fee bill and bond, if one be given, and if the money has been collected thereon, he shall order the clerk to restore the same, and shall impose a fine on such clerk, in favor of the party injured, of not less than one dollar, nor more than three dollars, for every item erroneously charged in said fee bill by said clerk; and shall grant to the party injured, process of attachment, to recover back the amount of such fee bill, when paid, and also the fine or fines so imposed; but if it shall appear to the said judge, that such fee bill is correct, the party charged with the same, shall pay to such clerk, an interest on the amount of such bill at the rate of ten per centum per annum, from the time of the delivery of such bill till the same be paid.

Proviso.

Fee bill may be replevied.

And if improper.

To be quashed by the judge.

Party injured to proceed to recover back the money.

Clerk's duty relative to fee books.

SEC. 8. The clerks of the supreme and circuit courts shall, at or after every term of their respective courts, make and set down, in a book to be kept for that purpose, a fee bill in each cause, in which costs shall have been adjudged, including the costs of sheriffs and other officers of court, setting down the costs of the plaintiff and defendant, which book shall be a public record; and for the purpose of collecting such costs, it shall and may be lawful for such clerk, and it is hereby made his duty, when required by any officer of the court, interested in the same, to make out a copy or transcript of such bill of costs and deliver the same to the sheriff of the county where the person or persons chargeable with the same, shall reside or have property; which fee bills, so issued, shall have the force and effect of an execution, and be collected in the same

manner: *Provided,* nothing herein contained shall be so construed, as to prevent the collection of such costs by execution, on final judgments.

SEC. 9. If any sheriff, or other officer to whom any such fee bill shall have been delivered, shall neglect to make return thereof, or to pay the amount of such fee bill, except his own fees, it shall and may be lawful for any party interested in such fee bill, to obtain a rule of court against such sheriff, or other officer, and proceed against him by attachment, and recover the same, according to the rules and practice of the court where such costs may have accrued.

SEC. 10. Whenever any clerk of any circuit court of this state, shall be required to certify the records of the proceedings below to the supreme court, such record shall only contain the declaration, writ or summons, plea, demurrer, rejoinder, or other pleadings in the suit, together with the judgment of the court below given thereupon, unless such clerk shall be especially directed by the court, or the counsel for either party, to insert in the body of such record such other pleadings or papers as the court or parties may deem material to the matter in controversy; and if any such clerk shall insert in such record, others than those aforesaid, or such as he may be especially instructed to insert, he shall not be entitled to receive any fee for such paper or pleading as aforesaid.

SEC. 11. Any person who has heretofore been, or who is at this time the sheriff of any county in this state, and in whose hands the clerks of their respective counties, have, agreeably to the statute of this state in such cases made and provided, put their fees for collection, and which fees the sheriffs, as aforesaid, have not collected, are hereby fully authorized to go on and make such collections, as if they had done so in strict conformity with the law; together with all fees which may be due to them for services as sheriffs rendered: *Provided,* that the division of no county shall, in any instance, interfere with such collections.

SEC. 12. The clerks of the circuit and county commissioners' courts, shall provide all the necessary books for their respective offices; and a safe press or presses, with locks and keys for the safe keeping of the archives of their respective offices; and the county commissioners' courts shall make allowances for the same, and for articles of stationery necessary for their respective courts, out of the county treasury, from time to time; and the clerk of the supreme court shall also procure the necessary books, stationery, and presses for the safe deposit of the archives of his office which shall be certified by the said court to the auditor of public accounts, who shall draw a warrant or warrants on the state treasury for the amount of the same.

SEC. 13. It shall be the duty of the county commissioners' court, in each county, as soon as the same shall be practicable, to cause a suitable room or rooms to be provided, at the court house in their respective counties, for the offices of the clerks of the circuit courts, and county commissioners' courts; and when the same shall be so provided, the clerks shall keep their offices at the place so provided.

SEC. 14. In all cases on judgments, on which execution may,

Sheriff's duty relative to fee bills.

Contents of a record of the supreme court

Where sheriffs have not collected fee bills how to proceed.

Stationery and furniture for the supreme and circuit courts.

Cost bills to go with the execution.

or shall hereafter issue, from any court of record, the clerk of the court from which the same shall issue, shall, at the time of issuing thereof, make out under his signature, and deliver to the sheriff or coroner, as the case may be, with the execution, a detailed bill of the costs in the said suit, from its commencement to its termination, in order that the party paying the same, may certainly know with and for what he is chargeable; which said bill, the said officer to whose hands the execution may so come, shall deliver to the party against whom the execution may be; and upon his replevying or paying the same, together with his certificate thereon, that the same was so replevied or paid by the said person.

Penalty for omission.

SEC. 15. Should any officer, concerned in issuing or executing any execution, hereafter to be issued as aforesaid, fail in the duty enjoined on him, in the preceding section hereof, he shall forfeit and pay to the party injured, the sum of fifty dollars with costs, to be recovered in any court of record in this state, and no imparlance or delay shall be allowed therein.

Clerks to set up in their offices their fees as allowed by law.

SEC. 16. The clerks of the several courts aforesaid, judges of probate, and justices of the peace respectively, shall be required to set up in some conspicuous place in each of their offices, and there continually keep a fair and complete table of their fees, allowed by this act; and if any such officer shall fail to comply with the provisions of this section, within three months after this act shall take effect, or shall, at any time thereafter, for ten days together, not have such table continually kept up as aforesaid, he shall forfeit and pay for every such neglect, the sum of ten dollars, to be recovered before any justice of the peace of the proper county, to the use of any person or persons, who may inform and sue for the same.

Acts repealed.

SEC. 17. All laws and parts of laws, which may have heretofore required the clerks of the supreme and circuit courts to make up complete records, except in cases where the title to lands shall come in question, and in capital criminal cases; or where such clerks shall be directed by one of the parties concerned, to make the same, shall be, and they are hereby repealed; and if in any cause, where the clerk is not required by law, either party shall require a complete record, the party so requiring it, shall pay the cost of the same.

Old clerks allowed to collect their fees.

The clerks of the several circuit courts of this state, heretofore appointed by the late circuit judges, may in all things proceed to collect their fees by fee bill, in the manner provided in this act for other clerks; and may, for that purpose, examine any fee book or record, in any of said courts; and all other acts and parts of acts coming within the purview of, or repugnant to this act, be, and the same are hereby repealed: *Provided*, that nothing in this act contained, shall be so construed as to prevent the recovery of salaries, fees, and compensation, which are now due and payable, or which may become so before this act takes effect, in the manner prescribed by the several acts hereby altered and repealed: *Provided*, also, that the act, entitled "An act concerning public officers, and the payment of money out of the state treasury," approved Jan. 25, 1826, be and the same is hereby repealed. The 1st, 2d, 3d,

Acts repealed.

and 4th sections of this act, to take effect from and after its passage, the remainder thereof, on the first day of June next.

APPROVED, Feb. 19, 1827.

AN ACT in addition to an act regulating the Salaries, Fees, and Compensation of the several officers and persons therein mentioned. *In force January 23, 1829.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That hereafter it shall be lawful for the clerks of the respective courts of this state, who are authorized to issue fee bills, to place the same in the hands of any constable of the proper county for collection; and the constable receiving the same shall be liable to the several remedies for any default set forth in the act to which this is an addition, therein provided. *Fees may be collected by constables.*

SEC. 2. The following fees shall be allowed to the judges of probate, in addition to the fees now allowed by law, viz: *Fees of judges probate.*

	Cents.
For administering oath to each witness,	6½
Swearing any person to an affidavit,	12½
Issuing order for writ of certiorari,	25
Examining petition and application for writ of certiorari,	25
Issuing injunction, <i>ne exeat</i> or any special writ,	50
Issuing subpoena, attachment, or other process, under seal,	25
Entering each decree, order, or judgment, except orders allowing claims for or against an estate,	25
Recording appraisement, sale bill, and all other exhibits and writings required to be recorded, (wills and codicils excepted,) for every hundred words, figures inclusive,	10
Filing each paper belonging to the settlement of any estate,	6½
Issuing letters of guardianship and recording same,	1 00
Taking bond of guardian,	50
Taking any bonds not before specified,	50
Revoking letters testamentary, administration, or guardianship,	50
Swearing each jury,	25
Writing indenture, to be paid by master,	50

And for the collection of the fees aforesaid, the judge of probate may issue fee bills, directed to the sheriff or to any constable of the county, who is hereby authorized to collect the same as in other cases. *May issue his fee bill.*

SEC. 3. And hereafter the clerks of the courts of county commissioners shall not charge any fees for issuing writs of election, comparing election returns, issuing notices to supervisors of roads, issuing certificates of allowances made to individuals by the court, or for any other services rendered the county; but the courts shall allow their respective clerks such reasonable compensation as they *Clerks of county com.*

may think right, as an *ex officio* fee, not exceeding twenty dollars per annum, exclusive of a reasonable allowance per day, for their attendance on the courts in term time : and so much of the sixth section of the act to which this is an amendment, as authorizes the county commissioners' courts to allow their clerks a compensation per day, for their services rendered the county, is hereby repealed.

The following fees shall be allowed to the recorders :

Cents.

Recorder's fees. For recording all deeds, mortgages, and other instruments of writing, for every one hundred words. 15
For entering every tract of land, over five, in each deed or conveyance, 64

Sheriff's commission on levies. SEC. 4. So much of the sixth section of the acts, regulating salaries, fees, and compensation of the several officers and persons therein mentioned, passed on the nineteenth day of February, 1827, as allows any commission to sheriffs for offering real or personal estate for sale, where the execution shall be settled by the parties, replevied, or stopped by injunction, or where the property shall not be actually sold, is hereby repealed ; and in all such cases the sheriff shall be allowed fifty cents for levying, and six and one fourth cents a mile for going to, and returning from the place of sale.

Clerk's, &c. fee for taking proof or acknowledgment of deed. SEC. 5. Clerks of the supreme, circuit, and county commissioners' courts, and notaries public, shall be allowed a fee of twenty-five cents for taking the proof or acknowledgment of any deed or conveyance, and affixing his official seal.

Certificate of magistracy. SEC. 6. Clerks of county commissioners' courts shall be allowed twenty-five cents for every certificate of magistracy, with the official seal annexed.

Acknowledgment of deed. SEC. 7. Every officer authorized by law to take proofs or acknowledgments of deeds, is allowed a fee of twenty-five cents, for each deed proved or acknowledged before him.

This act is to be in force from and after its passage.

APPROVED, January 23, 1829.

FERRIES.

In force Feb. 12, 1827. AN ACT to provide for the establishment of Ferries, Toll Bridges and Turnpike Roads.

County commissioners may establish ferries and toll bridges

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That whenever it shall be considered necessary to establish a ferry or toll bridge across any lake, river, creek, or any other water course within the limits or upon the borders of this state, or to turnpike or causeway any public road or highway, it shall be the duty of the county commissioner's court of the proper county, on due application being made by any qualified person or persons, to establish and confirm the same by a special order, to be made for that purpose, under such

regulations, restrictions, and forfeitures as are hereinafter directed and pointed out : *Provided*, that no such application shall avail any such person or persons as aforesaid, unless his, her, or their intention in relation thereto shall have been previously published in some public newspaper printed in this state, or advertised on the door of the court house, and in three other of the most public places in the county, in which such ferry, toll bridge, or turnpike road is proposed to be established, for at least four weeks, successively, next preceding the sitting of the court at which the same shall be made : *And, provided further*, that the proprietor or proprietors of the lands adjoining to, or embracing such water course as aforesaid, over which any such ferry or toll bridge shall be proposed to be established as aforesaid, or where any such turnpike road shall pass as aforesaid, shall, at all times, have the preference in establishing or erecting the same in all cases where application shall be made for that purpose, before such privilege shall have been granted to any other person or persons as aforesaid.

SEC. 2. When any ferry, toll bridge, or turnpike road shall be established as aforesaid, it shall be the duty of the court establishing the same, to direct their clerk to issue to the proprietor or proprietors thereof, a license under the seal of such court, to keep the same according to law : *Provided*, that every such proprietor or proprietors, as aforesaid, to whom any such license may be directed to be issued as aforesaid, shall, before the issuing thereof, pay into the county treasury, or to such person or persons as shall be authorized to receive the same, the amount of the first year's tax, which may be assessed upon such ferry, toll bridge, or turnpike road by said court, and specified in the order establishing the same, and enter into bond with one or more sufficient securities, to be approved by the court, in a sum not less than one hundred, nor more than five hundred dollars ; payable to the county commissioners of the proper county, and their successors in office, for the use of such county, with a condition therein contained, that he, she, or they will keep such ferry, toll bridge, or turnpike road according to law ; and if default shall, at any time, be made in the condition of said bond, damages not exceeding the penalties therein mentioned may be sued for, and recovered in the name of the county commissioners for the use of the county wherein such ferry, toll bridge, or turnpike road shall have been established, in any court having competent jurisdiction.

SEC. 3. Each ferry-keeper shall be furnished and provided with a good tight boat or boats, if more than one be necessary, and other small craft of sufficient number, dimensions, strength, and steadiness, for the safe and speedy transportation of all passengers, their teams, horses, cattle, and other animals, as well as their goods, chattels, and effects ; and the said boat or boats and other small craft shall, at all times, be well furnished with suitable oars, setting poles, rigging, and other implements necessary for the service thereof ; and also, with men of sufficient number, strength, discretion, and skill to manage the same ; and such ferry-keeper shall, at all times, keep the place of embarking and landing in good repair, by cutting away the banks and erecting wharves and causeways when necessary, so that passengers, their teams, horses,

cattle, and other property, may be embarked and landed without danger or unnecessary delay.

Duty of toll bridge and turnpike keepers.

SEC. 4. Every keeper of a toll bridge or turnpike road, shall, in like manner, be required to keep the same at all times in good repair, so as to afford a safe and speedy passage to all persons, their teams, horses, cattle, and other animals, who may have occasion to use the same.

Further duty.

SEC. 5. Every keeper of a ferry, toll bridge, or turnpike road as aforesaid, shall give constant and diligent attention to the same from daylight in the morning until dark in the evening of each day, and shall give passage to all public messengers and expresses, to all grand and petit jurors, when going to and returning from court, without any fee or reward whatever: *Provided*, that no messenger or express shall be considered as being sent on public service, within the meaning of this act, unless he shall have been despatched by a commander-in-chief, major, or brigadier general, colonel, lieutenant-colonel, major, or commandant of some military post or establishment, to the governor or commander-in-chief of the militia of this state, or *vice versa*; and the despatch carried by such messenger or express, be endorsed, "on public service," and signed by the officer sending the same.

Proviso.

Their liability.

And all such keepers of ferries, toll bridges, and turnpike roads as aforesaid, shall also be obliged at any hour of the night, if required, except in cases of evident danger, to give passage to all public messengers and expresses as aforesaid; and also to all other persons requiring the same, on their paying or tendering double the rate of ferriage or toll allowed to be taken during the day time.— And if any such keeper of a ferry, toll bridge, or turnpike road as aforesaid shall, at any time, neglect or refuse to give passage to such person or persons, or their property as aforesaid, he or she so offending, shall forfeit and pay five dollars for every such offence to the party aggrieved, before any justice of the peace of the county wherein such offence shall be committed, and shall also be liable to an action on the case for any special damage, which any such person may sustain in consequence of such neglect or refusal. But no ferryman shall be required to put off from shore, or to attempt to pass any such water-course as aforesaid, when it manifestly appears to be hazardous so to do, by reason of any flood, storm, tempest, or ice; nor shall any keeper of a ferry, toll bridge, or turnpike road as aforesaid, be compellable, (except as is hereinbefore excepted,) to give passage to any person or persons, or to his, her, or their property as aforesaid, until the fare or toll, properly chargeable by such keeper, shall have been fully paid or tendered; and every juryman to entitle him to the benefit of this section, shall produce to the ferry-keeper, &c. the certificate of the sheriff of his county, that he has been duly summoned to serve on the grand or petit jury at the term of the court, to or from which he is going.

Not liable unless paid in advance.

Rates, how fixed.

SEC. 6. The county commissioners' courts in their respective counties are authorized and required to fix, from time to time, the rates, fare, or toll, which each keeper of any ferry, toll bridge, or turnpike road shall hereafter demand, for the passage of all persons, wagons, carts, carriages, horses, cattle, sheep, hogs, and other

property, having due regard to the breadth and situation of the stream or water-course over which such ferry or bridge shall be established, the dangers and difficulties incident thereto, the length, breadth, and quality of the road, and the publicity of the place at which the same shall have been established. And every such keeper of a ferry, toll bridge, or turnpike road, as aforesaid, who shall, at any time, demand and take more than the fare or toll so stated and allowed as aforesaid, shall forfeit and pay to the party aggrieved, for every such offence, the sum of five dollars over and above the amount which shall be thus illegally demanded and taken, to be recovered before any justice of the peace of the county wherein such offence shall be committed.

SEC. 7. Each keeper of a ferry, toll bridge, or turnpike road, which now is, or shall hereafter be established in this state, shall be required to set or post up in some conspicuous place, immediately adjoining his or her ferry landing, toll bridge, or turnpike gate, a painted, printed, or written list of the several rates or fares, which shall be chargeable at such ferry, toll bridge, or turnpike gate, so that the same shall not exceed those which shall, from time to time, be allowed by law; which said lists of fares or rates as aforesaid shall, at all times, be painted, printed, or written in a plain, legible manner, and posted up so near the place or places where persons shall pass across such ferry, toll bridge, or turnpike road as aforesaid, that the same shall be open and legible to all such passengers: And if, at any time, any such keeper as aforesaid, shall refuse or neglect to put up such list of rates or fares as aforesaid, it shall not be lawful to charge any ferriage or toll, or to take any compensation whatever, at any such ferry, toll bridge, or turnpike gate, during such delinquency.

Rates to be posted up at ferries.

SEC. 8. All persons shall be received into such ferry boats or other vessels as aforesaid, and conveyed across the water course, over which the same shall be established, according to their arrival or first coming to the said ferry: And if any ferry-keeper shall act contrary to this regulation, he shall forfeit and pay the sum of three dollars for every such offence, to the party aggrieved, recoverable before any justice of the peace of the county wherein such offence shall have been committed: *Provided*, that all public officers, or such as go on public or urgent occasions, as post riders, couriers, physicians, surgeons, and midwives shall, in all cases, be the first carried over, where all cannot go at the same time.

Liability for not conforming to this act.

SEC. 9. The owner or owners, keeper or keepers, at all ferries and toll bridges, which now are, or hereafter shall be established by law, and kept agreeably to this act, shall have the exclusive privilege of the transportation or passage of all persons, their teams, horses, cattle, and other property over or across the same, and be entitled to all the fare by law arising therefrom: *Provided*, that nothing herein contained shall be construed to prevent any person or persons from crossing any stream or water course, over which any such ferry or toll bridge shall be established as aforesaid, in his or her own boat or other craft, on his or her own business; and also to take in and cross his neighbors where the same is done without fee, and not with intention to injure any ferryman near.

Ferry keepers to have exclusive privilege of ferrying.

Proviso.

Ferries on Ohio river, how regulated.

SEC. 10. All ferries heretofore established and confirmed over the river Ohio, to the proprietor or proprietors of land on the western shore of said river by the county commissioners' courts of any of the counties bounded by or situate upon said river, as well as all other ferries and toll bridges which have, at any time been established over any other of the lakes, rivers, creeks, or other water courses, within the limits or upon the borders of this state, and where the same have been kept in operation or repair, from time to time, according to law; and have not at any time since their establishment been discontinued or abandoned, shall be, and they are hereby declared to be established ferries and toll bridges, within the meaning of this act.

Ferry privilege extended three miles.

SEC. 11. If any person or persons except those whose ferries or toll bridges are established and confirmed by this act, or shall hereafter be established and licensed by some county commissioners' court under the provisions of this act, shall, at any time, run any boats or other craft, for the purpose of conveying passengers or their property across any such water course as aforesaid, within three miles of any ferry or toll bridge which now is, or hereafter shall be established as aforesaid, except as is hereinbefore allowed, he, she, or they so offending shall forfeit every such boat or boats, or other craft to the owner or proprietor of the ferry or toll bridge, within three miles of which, the same shall be run as aforesaid; and the owner or proprietor of such ferry or toll bridge may, at any time after such forfeiture shall have accrued, enter upon and take possession of such boat or boats, or other craft to his or her own use; and such offender shall, moreover, pay to the proprietor of such ferry or toll bridge as aforesaid, who may be aggrieved as aforesaid, the sum of fifteen dollars for each person who may be thus unlawfully carried or conveyed across any such water course as aforesaid, to be recovered by motion before any justice of the peace of the proper country, upon giving to such offender five days notice of the time and place of making such motion; which notice may be served on such person or persons, either in or out of the state, by delivering or tendering a copy thereof.

Keepers exempt from certain duties.

SEC. 12. For the encouragement of ferry-keepers, and the keepers of the gates of toll bridges and turnpike roads, and in consideration of their giving a free passage to public messengers and others exempted by this act, all men necessarily attending on ferries, toll bridges, or turnpike gates in this state, shall be free from military duty, of opening and repairing highways, so far as personal service is required, and from serving on juries.

Ferries to be well furnished with boats, &c.

SEC. 13. If any ferry or ferries which now are, or hereafter may be established as aforesaid, shall not be furnished with sufficient boat or boats, or other craft, with the necessary oars, setting poles, rigging, and other implements for the service thereof, and also with a sufficient number of able bodied and skillful ferrymen, as is provided in the third section of this act; within three months from the establishment thereof, or if any toll bridge or turnpike road, which now is, or hereafter shall be established as aforesaid, shall not be erected and completed agreeably to the terms and conditions imposed by the county commissioners' court, within twelve months after the establishment thereof, or if any such ferry, toll

bridge, or turnpike road shall not, at any time hereafter, be kept in good condition and repair, agreeably to the provisions of this act, or if the same shall, at any time be abandoned, disused, or unfrequented for the space of six months, it shall and may be lawful for the county commissioners' court of the proper county, on complaint being made, to summon the proprietor or proprietors of such ferry, toll bridge, or turnpike road, to shew cause why the same should not be discontinued, and their license revoked; and decide thereon according to the testimony adduced, and as shall be agreeable to equity and justice; which decision, when made, shall be valid in law to all intents and purposes, but subject to appeal to the circuit court, as in other cases.

License for ferries revokable.

SEC. 14. All ferries, toll bridges, and turnpike roads, which now are, or hereafter may be established as aforesaid, shall be subject to an annual tax of not less than two, nor more than one hundred dollars, in the discretion of the county commissioners' court of the county in which the same shall be located; which tax, when assessed, shall be collected and paid over as other taxes are, and shall constitute a part of the county revenue.

Counties may purchase toll bridges.

SEC. 15. If the county in which any toll bridge, or turnpike road shall be established and erected as aforesaid shall, at any time, pay or cause to be paid to the proprietor or proprietors thereof, the original cost of such toll bridge, or turnpike road as aforesaid, with ten per cent. interest thereon, then the said bridge or road shall cease to be private property, and shall become a public bridge or highway.

Persons not allowed to ferry without license.

SEC. 16. No person shall establish, keep, or use any ferry, toll bridge, or turnpike road as aforesaid, for the conveyance or passage of persons and their property as aforesaid, for profit or hire, unless he or she shall be licensed as directed by this act, under the penalty of five dollars for each offence, recoverable before any justice of the peace of the county wherein such offence shall be committed; the one half thereof shall go to the person suing for the same, and the other half to the county; and if any person or persons not licensed as aforesaid shall, at any time, pass any person or persons, or their property as aforesaid, except as is provided in the ninth section, over any lake, river, creek, or any other water course, where any ferry or toll bridge shall, at the time, be established, and kept as aforesaid, or within three miles thereof, either with or without compensation, with intent to injure the keeper or proprietor of such ferry or toll bridge, he, she, or they shall incur the same forfeitures, and may be proceeded against in the same manner as is provided in the eleventh section: *Provided*, that it shall not be considered illegal for any person or persons to pass any person or his property without compensation, in cases where it shall be made to appear that such established ferry or toll bridge was not, at the time, in actual operation, or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

Acts repealed.

SEC. 17. That the act entitled "An act to establish and regulate ferries," approved February 20, 1819; the act entitled "An act to amend an act, entitled an act to establish and regulate ferries," approved, February 20, 1819, approved, February 9, 1821; the act, entitled "An act to amend an act, entitled an act to establish

and regulate ferries," approved, January 10, 1825; the act entitled "An act authorizing the county commissioners to grant licenses for the erection of toll bridges and turnpike roads," approved, March 27, 1819; and all other acts and parts of acts coming within the purview of, or repugnant to this act, be, and the same are hereby repealed: *Provided, always*, that nothing in this act contained, shall be construed to interfere with, infringe, restrict, or impair any of the rights or privileges which have been heretofore granted and confirmed to any person or persons, by virtue of any former law of this state. This act to take effect from and after its passage.

APPROVED, Feb. 12, 1827.

*In force
Feb. 12,
1827.*

AN ACT supplemental to an act, entitled "An act to establish and regulate Ferries, approved, February 20, 1819."

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly.* That the ferries heretofore established and confirmed over the river Ohio, to the owner or owners of land on the western shore of said river, by the county commissioners' court of any of the counties bounded by, or situate upon said river, are hereby declared to be established ferries, any thing in the act to which this is a supplement, approved, February 20, 1819, notwithstanding.

SEC. 2. The county commissioners' court of the several counties which now are, or hereafter may be situated on the river Ohio, shall have full power and authority to grant and confirm to the proprietors of land on the western shore of said river, the right to ferry over said river: *Provided*, that no ferry shall be granted, over said river, within three miles of any established ferry.

SEC. 3. If any person or persons except those whose ferries are confirmed and established by this act, or shall hereafter be granted and confirmed by some county commissioners' court under the provisions of this act, shall run any boat or boats, for the purpose of conveying passengers across said river Ohio, within three miles of any ferry established and confirmed by this act, or which may be granted and confirmed by any county commissioners' court under the provisions of this act, he, she, or they shall forfeit every such boat or boats, to the owner of the ferry, within three miles of which such boat or boats shall be run as aforesaid; and the owner of such ferry may enter upon, and take possession of said boat or boats for his own use; and such offenders shall, moreover, pay to the owner of such ferry, within three miles of which said boat or boats shall be run, the sum of fifteen dollars for every person carried or conveyed over said river in such boat or boats, to be recovered before any justice of the peace in the proper county, by motion, upon giving such offender or offenders five days notice of the time and place of making such motion; which notice may

*Ferries
over the
Ohio river
established.*

*Com'rs
courts of
counties on
that river
have cer-
tain extra
power re-
lative to
ferries
thereon.*

*No person
allowed to
ferry except
present
owners.*

be served on such person or persons at any place, either in or out of the state, by delivering or tendering a copy thereof.

SEC. 4. And it shall and may be lawful for the proprietor or proprietors of ferries established, or which may be established, by authority of this act, their heirs and assigns, to demand and receive from passengers and other persons, such rates of toll as shall, from time to time be established by the county commissioners' court of the respective counties in which such ferries may be situate.

SEC. 5. The ferries which are, or may be established by authority of this act, shall be subject to the same taxes as now are, or may hereafter be imposed on other ferries in this state, and under the same regulations and forfeitures. This act to take effect from and after its passage.

APPROVED, Feb. 12, 1827.

AN ACT to amend the several acts therein named, relating to the several acts concerning the establishing and regulating ferries in this state.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That so much of an act entitled "an act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi," approved, March 2, 1819, as prohibits the establishing a ferry within one mile of the ferry established by that act; and so much of the act entitled "an act to authorize Samuel Wiggins to make a turnpike road, and for other purposes," approved, February 6, 1821, as authorizes the said Wiggins to remove his ferry to any land belonging to him under the same privileges that were conferred to him by the act, entitled "an act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi river," approved, March 2, 1819, as relates to the prohibiting the establishing any ferry or the running boats within one mile of the ferry established by said last mentioned act, and so much of the act entitled "An Act to amend an act to provide for the establishment of ferries, toll bridges, and turnpike roads," approved, February 12, 1827, amended January 22, 1829, as prohibits the establishing of any ferry on the waters of the Mississippi, Ohio, Illinois, or Great Wabash rivers, within two miles of any such established ferry, or toll bridge be, and the same is hereby repealed.

APPROVED, January 19, 1833.

*Com'rs
court to fix
the rate of
ferriage.*

*Ferries
hereafter
established.*

*In force
Jan. 19,
1833.*

*Parts of
former
acts re-
pealed.*

FIRE COMPANIES.

In force
Feb. 12.
1835.

AN ACT for the Incorporation of Fire Companies.

*Fire com-
panies may
be formed.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter it shall be lawful for any number of persons, resident within any town or corporation within this State, exceeding forty persons, to form themselves into a company or companies, for the purpose of extinguishing fire, who, on having their names and subscriptions recorded in the Recorder's office in the proper county, are hereby authorized to make such rules and regulations as to a majority of said company or companies may seem proper and necessary for the procuring of engines, buckets, hooks, ladders, and all implements necessary for working said engines and exercising the companies: *Provided,* no by-law shall be contrary to the laws of this State.

*Authorized
to make by-
laws.*

Proviso.

*Declared
bodies poli-
tic and cor-
porate.*

SEC. 2. So soon as such persons shall have had their names and subscriptions recorded as aforesaid, they and their successors shall be, in law and in fact, a body corporate and politic, to have continuance forever, by the name and style of "The—Fire Company;" and by such corporate name and style, shall be forever able and capable in law and in equity,—to sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in all manner of suits, actions, complaints, pleas, causes, matters, and demands of whatever kind and nature they may be, in as full and effectual a manner, as any person or persons, bodies corporate and politic may or can do.

Style.

*Fines and
forfeitures
how recov-
ered.*

SEC. 3. All fines and forfeitures, for non-attendance or delinquency imposed by the by-laws and regulations to be adopted by the companies provided for by this act, not exceeding twenty dollars, shall be recoverable by action of debt, before any justice of the peace of the proper county, by the said company in their corporate capacity, which said fines and forfeitures, shall be for the use of the company suing for the same.

*Firemen
exempted
from mili-
tia duty.*

SEC. 4. All persons who shall form themselves into fire companies, as is provided in the first section of this act, shall be exempt from militia duty during the time they belong to such company; and all persons who shall have served twelve years in succession in any such fire company, shall, forever after, be exempt from doing militia duty in this State, except in time of war.

This act to be in force and take effect from and after its passage.

APPROVED, Feb. 12, 1835.

FORCIBLE ENTRY AND DETAINER.

AN ACT concerning Forcible Entry and Detainer.

In force
June 1,
1827.

*What
deemed
forcible
entry and
detainer.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That if any person shall make any entry into any lands, tenements, or other possessions, except in cases where entry is given by law, or shall make any such entry by force, or if any person shall wilfully and without force, hold over any lands, tenements, or other possessions, after the determination of the time for which such lands, tenements, or possessions were let to him, or to the person under whom he claims, after demand made in writing for possession thereof, by the person entitled to such possession, such person shall be adjudged guilty of a forcible entry and detainer, or of forcible detainer, as the case may be, within the intent and meaning of this act.

*Two jus-
tices of the
peace to
have juris-
diction of
all causes
under this
act.*

SEC. 2. Any two justices of the peace of any county in this state, shall have jurisdiction of any case arising under this act, and on complaint upon oath of the party grieved, shall issue their summons, directed to the sheriff, (or coroner if the sheriff be interested,) of their county, commanding him to summon the person against whom the complaint is made to appear before such justices at a time and place to be stated in such summons, not more than twelve, nor less than six days from the time of issuing such summons, and which shall be served at least five days before the return day thereof, by reading the same to the defendant, or leaving a copy at his place of abode; and the said justices shall, also, at the same time, issue a precept to the sheriff or coroner, commanding him to summon a jury of twelve good and lawful men of the county, to appear before them, at the return of such summons, to hear and try the said complaint. And if any part of the jurors shall fail to attend, or be challenged, the said justices may order the sheriff or coroner to complete the number, by summoning and returning others forthwith.

*How to pro-
ceed to sum-
mon a jury.*

*Sheriff's
duty.*

SEC. 3. The sheriff or coroner shall return to the said justices the summons and precept as aforesaid, on the day assigned for trial, and shall state on the back of said summons how the same was served, and on the back of said precept, a list of the names of the jurors. And if the defendant does not appear, the justices shall proceed to try the said cause, *ex parte*, or may, in their discretion, postpone the trial for a time not exceeding ten days; and the said justices shall also issue subpoenas for witnesses, and proceed in the trial of said cause, as in other cases of trial by jury.

*Defendant
not appear-
ing, cause
tried ex
parte.*

*Justices to
keep record
of proceed-
ings.*

SEC. 4. No indictment or inquisition shall be necessary in any case arising under this act; but the justices shall set down in writing the complaint, under oath, particularly describing the lands, tenements, or possessions in question, and shall keep a record of the proceedings had before them; and if the jury shall find the defendant guilty, they shall give judgment thereon, for the plaintiff to have restitution of the premises and his costs; and shall award their writ of restitution; and if a verdict be given for the defend-

ant, judgment shall be given against the plaintiff for costs and execution issued therefor.

Appeals allowed, if taken within five days
SEC. 5. If either party shall feel aggrieved by the verdict of the jury or the decision of the justices on any trial had under this act, he or she may have an appeal to the circuit court, to be obtained in the same manner and tried in the same way as appeals from justices of the peace in other cases; and if the appeal be taken within five days after the trial had before the justices, no writ of restitution or execution shall be issued by them; and the circuit court, on giving judgment for the plaintiff, shall award a writ of restitution and execution for costs, including the costs before the justices: and if judgment be for the defendant, he shall recover costs, in like manner, and have execution for the same.

Execution.
SEC. 6. This act repeals "an act against forcible entry and detainer," approved, February 24, 1819; but rights acquired under that act are not hereby affected. This act shall take effect on the first day of June next.

Act repealed.

APPROVED, Feb. 2, 1827.

In force March 1st, 1837. **AN ACT** amending an act entitled an act concerning forcible entry and detainer, approved Feb. 2d, 1827.

Jurisdiction of forcible entry and detainer extended to justices of the peace.
SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter in all cases of forcible entry and detainer or forcible detainer only, any justice of the peace shall have jurisdiction of any case arising under the act to which this is amendatory, upon oath of the party aggrieved, or his authorized agent.

Party aggrieved may appeal to circuit court.
SEC. 2. Either party feeling aggrieved by the verdict of the jury or the decision of the justice on any trial had under this act, he or she or they, may have an appeal to the circuit court to be obtained in the same manner as appeals from justices of the peace in other cases, *Provided,* That the appellant or appellants shall also insert in the appeal bond, a clause conditioned for the payment of all rents becoming due if any from the commencement of the suit until the final determination thereof, as provided in the second section of an act concerning landlord and tenants, approved Feb. 13, 1827.

Clause to be inserted for payment of rent.

Acts repealed.
SEC. 3. This act repeals so much of the second and fifth sections of an act concerning forcible entry and detainer, approved February 2d, 1827, as is contrary to the provisions of this act, but rights accrued under that act, are not hereby affected. This act to take effect on the first day of March next.

APPROVED, Feb. 28, 1837.

FRAUDS AND PERJURIES.

AN ACT for the prevention of Frauds and Perjuries.

In force Feb. 16, 1827.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That no action shall be brought, whereby to charge any executor or administrator upon any special promise to answer any debt or damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, tenements, or hereditaments, or any interest in, or concerning them, for a longer term than one year; or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto, by him lawfully authorized.

What agreements void if not in writing.

SEC. 2. Every gift, grant, or conveyance of lands, tenements, hereditaments, goods, or chattels, or of any rent, common or profit of the same, by writing or otherwise,—and every bond, suit, judgment, or execution had and made, or contrived of malice, fraud, covin, collusion, or guile to the intent or purpose to delay, hinder, or defraud creditors of their just and lawful actions, suits, debts, accounts, damages, penalties, or forfeitures, or to defraud or deceive those who shall purchase the same lands, tenements, or hereditaments, or any rent, profit or commodity out of them, shall be from thenceforth deemed and taken only as against the person or persons, his, her, or their heirs, successors, executors, administrators, or assigns, and every of them, whose debts, suits, demands, estates, and interests by such guileful and covinous devices and practices as aforesaid shall, or might be, in any wise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void; any pretence, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and moreover, if a conveyance be of goods and chattels, and be not, on consideration, deemed valuable in law, it shall be taken to be fraudulent within this act, unless the same be by will, duly proved and recorded, or by deed in writing acknowledged or proved, if the same deed includes land, also, in such manner as conveyances of land are by law directed to be acknowledged or proved; or if it be goods and chattels only, then acknowledged or proved by two witnesses, before any court of record in the county wherein one of the parties lives, within eight months after the execution thereof, or unless possession shall really and *bona fide* remain with the donee; and in like manner where any loan of goods and chattels shall be pretended to have been made to any person, with whom or those claiming under him, possession shall have remained for the space of five years, without demand made and pursued by due process at law, on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of

Contracts, &c. when void.

Conveyance of goods, chattels, &c.

When possession deemed evidence of fraud.

an use, or property by way of condition, reservation, remainder, or otherwise, in goods or chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to creditors and purchasers of the person aforesaid, so remaining in possession, to be fraudulent within this act, and that the absolute property is with the possession, unless such loan, reservation, or limitation of use or property were declared, by will or deed in writing, proved and recorded as aforesaid.

To what this act extends. SEC. 3. This act shall not extend to any estate or interest in any lands, goods, or chattels, or any rents common or profit, out of the same, which shall be upon good consideration, and *bona fide* lawfully conveyed, or assured to any person or persons, bodies politic, or corporate.

Creations of trusts how proved. SEC. 4. All declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party, who is by law enabled to declare such trust, or by his last will in writing; or else they shall be utterly void and of no effect: *Provided*, that resulting trust or trusts created by construction, implication, or operation of law, need not be in writing, and the same may be proved by parol.

Proviso. APPROVED, February 16, 1827.

FRAUDULENT DEVICES.

In force Feb. 23, 1833. AN ACT to prevent Fraudulent Devices, and for other purposes.

Fraudulent devices. SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That all wills and testaments, limitations, dispositions, or appointments of, or concerning any lands and tenements, or of any rent, profit, term, or charge out of the same, whereof any person or persons at the time of his, her, or their decease shall be seized in fee simple, in possession, in reversion, or remainder, or have power to dispose of the same by his, her, or their last will and testament, shall be deemed and taken (only as against the person or persons, his, her, or their heirs, successors, executors, administrators, or assigns, and every of them whose debts, suits, demands, estates, and interests by such will, testament, limitation, disposition, or appointment as aforesaid shall, or might be in any wise disturbed, hindered, delayed, or defrauded,) to be fraudulent, void and of non effect, any pretence, color, feigned, or presumed consideration, or any other matter or thing to the contrary notwithstanding.

Persons having claims against any individual making such fraudulent devise. SEC. 2. Any person or persons, his, her, or their heirs, devisees, executors, administrators, successors, or assigns, and every of them who shall or may have any debts, suits, or demands against any person or persons who shall make any fraudulent devise as aforesaid, or who have any debts, suits, or demands against any person or persons who shall die intestate, and have real estate to his, her, or their heirs, to descend according to the laws of this

state, shall, and may have, and maintain the same action or actions which lie against executors and administrators upon his, her, or their bonds, specialities, contracts, agreements, and undertakings against the executors or administrators, and the heir or heirs, or against the executors or administrators, and the devisee or devisees, or may join the executors or administrators, the heir, or heirs, and the devisee or devisees of such obligor or obligors, undertaker or undertakers as aforesaid, and shall not be delayed for the nonage of any of the parties.

May maintain an action. SEC. 3. When any suit or action in law or equity shall be brought against any heir or heirs, devisee or devisees, who shall be of nonage, it shall be lawful for the court to appoint a guardian, *ad litem*, for such infant heir or heirs, devisee or devisees, and may compel the person so appointed to act: *Provided*, that by such appointment such person shall not be rendered liable to pay any costs of suit.

Court may appoint a guardian ad litem for any infant heirs. SEC. 4. When any lands, tenements, or hereditaments, or any rents or profits out of the same shall descend to any heir or heirs, or be devised to any devisee or devisees, and the personal estate of the ancestor of such heir or heirs, or devisor of such devisee or devisees, shall be insufficient to discharge the just demands against such ancestor, or devisor's estate, such heir or heirs, devisee or devisees shall be liable to the creditor of their ancestor or devisor, to the full amount of the lands, tenements, or hereditaments, or rents and profits out of the same as may descend, or be devised to the said heir or heirs, devisee or devisees; and in all cases where any heir or heirs, devisee or devisees, shall be liable to pay the debt or debts of his executor or devisor, in regard of any lands, tenements, or hereditaments, or any rent or profit arising out of the same, descending or being devised to him, her, or them, and shall sell, alien, or make over the same before any action brought, or process sued out against him, her, or them, such heir or heirs at law, devisee or devisees, shall be answerable for such debt or debts to the value of the said lands, tenements, and hereditaments, rents or profits, so by him, her, or them sold, aliened or made over; and executions may be taken out upon any judgment so obtained against such heir or heirs, devisee or devisees, to the value of the said lands, tenements, and hereditaments, rents, and profits out of the same, as if the same were his, her, or their own proper debt or debts, saving and excepting that the lands and tenements, rents, and profits by him, her, or them *bona fide* aliened, before the action brought, shall not be liable to such execution.

When lands shall be devised and the personal estate prove insufficient to discharge the debts of such devisee. SEC. 5. When any action or suit is brought against any heir or heirs, devisee or devisees, he, she, or they may plead *riens per descent*, at the time of the commencement of the action or suit, and the plaintiff in such action may reply that he, she, or they had lands, tenements, or hereditaments, or rents or profits out of the same from his, her, or their ancestor, or devisor, before the commencement of the action or suit, and if upon issue joined thereupon, it be found for the plaintiff, the jury shall enquire of the value of the lands, tenements, hereditaments, or rents, and profits out of the same so descended or devised, and thereupon judgment shall be given, and execution awarded as aforesaid; but if judgment

Plea of riens per descent.

be given against such heir or heirs, devisee or devisees, by confessing of the action without confessing the assets descended or devised, or upon demurrer or *nihil dicit* or default, said judgment shall be given for the plaintiff without any writ to inquire of the lands, tenements, or hereditaments, or rents and profits out of the same so descended or devised.

When personal estate is insufficient to discharge a judgment had against the administrator, an action may be brought against the heir of the devisee.

SEC. 6. In all cases where a judgment has been obtained against the executor or executors, administrator or administrators of a deceased person on a contract or undertaking, on which a joint action might have been maintained against the executor or executors, administrator or administrators, and the heir or heirs, devisee or devisees of the deceased person, if it shall appear by a judgment of record, or the return of a proper officer, that there is not property of the deceased person in the hands of the executor or executors, administrator or administrators, to satisfy such judgment, it shall be lawful to bring a separate suit or action against the heir or heirs, devisee or devisees in such contract or undertaking; and the judgment against the executor or executors, administrator or administrators, if not satisfied, shall be no bar to the suit or action against the heir or heirs, devisee or devisees.

When no person shall administer for the space of a year.

SEC. 7. If no person shall administer on the goods and chattels of a deceased person for the space of one year after his or her death, a separate suit or action may be maintained against the heir or heirs, devisee or devisees, on all the contracts and undertakings of such deceased person.

Suits brought under this act.

SEC. 8. In all actions or suits commenced under the provisions of the preceding sections, the facts authorizing the suit to be brought separately against the heir or heirs, devisee or devisees, shall be distinctly set forth in the declaration.

APPROVED, Feb. 28, 1833.

FUGITIVES FROM JUSTICE.

AN ACT concerning Fugitives from Justice.

In force June 1, 1827.

Fugitives from other states how apprehended.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That whenever the executive of any other state, or of any territory of the United States, shall demand of the executive of this state any person as a fugitive from justice, and shall have complied with the requisitions of the act of congress in that case made and provided, it shall be the duty of the executive of this state to issue his warrant under the seal of the state, to apprehend the said fugitive, directed to any sheriff, coroner, or constable of any county of this state, or other person whom the said executive may think fit to entrust with the execution of said process: Any of the said persons may execute such warrant any where within the limits of this state, and convey such fugitive to any place within this state, which the executive in his said warrant shall direct.

SEC. 2. Whenever the executive of this state shall demand a

fugitive from justice from the executive of any other state, he shall issue his warrant, under the seal of the state, to some messenger commanding him to receive the said fugitive, and convey him to the sheriff of the proper county where the offence was committed.

SEC. 3. The expenses which may accrue under the two foregoing sections being first ascertained to the satisfaction of the executive, shall on his certificate be allowed and paid out of the state treasury, on the warrant of the auditor.

SEC. 4. Whenever any person within this state shall be charged upon the oath or affirmation of any credible witness, before any judge or justice of the peace, with the commission of any murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting, in any other state or territory of the United States; and that the said person hath fled from justice, it shall be lawful for the said judge or justice to issue his warrant for the apprehension of said person. If upon examination it shall appear to the satisfaction of such judge or justice, that the said person is guilty of the offence alleged against him, it shall be the duty of the said judge or justice to commit him to the jail of the county; or if the offence is bailable, according to the laws of this state, to take bail for his appearance at the next circuit court to be holden in that county. It shall be the duty of the said judge or justice to reduce the examination of the prisoner and those who bring him, to writing, and to return the same to the next circuit court of the county where such examination is had, as in other cases, and shall also send a copy of the examination and proceedings to the executive of this state, so soon thereafter as may be. If in the opinion of the executive of this state, the examination so furnished, contains sufficient evidence to warrant the finding of an indictment against such person, he shall forthwith notify the executive of the state or territory, where the crime is alleged to have been committed, of the proceedings which have been had against such person, and that he will deliver such person on demand, without requiring a copy of an indictment to accompany such demand; when such demand shall be made, the executive of this state shall forthwith issue his warrant under the seal of the state to the sheriff of the county where the said person is committed or bailed, commanding him to surrender him to such messenger as shall be therein named, to be conveyed out of this state. If the said person shall be out on bail, it shall be lawful for the sheriff to arrest him forthwith, any where within the state, and to surrender him agreeably to said warrant.

SEC. 5. In cases where the parties shall have been admitted to bail, and shall appear at the circuit court according to the condition of his recognizance, and no demand shall have been made of him, it shall be in the power of the said court to discharge the said recognizance or continue it according to the circumstances of the case; such as the distance of the place where the offender is alleged to have been committed, the time that hath intervened since the arrest of the party, the strength of the evidence against him. In no case shall such person be held in prison or to bail, longer than till the end of the second term of the circuit court after his caption. If no demand be made upon the sheriff for him within that time, he shall be discharged from prison or exonerated from his recognizance, as the case may be.

Fugitives from this to other states how to proceed.

Expenses how paid.

Person charged with commission of offences how to be apprehended.

Committing magistrate, to reduce the examination of prisoner to writing.

The party appearing at court and no demand may be discharged.

SEC. 6. If the recognizance shall be forfeited, it shall enure to the benefit of the state.

*Persons complain-
ing against
fugitives to
give bond
for costs.*

SEC. 7. In all cases where complaint shall be made as aforesaid against any fugitive from justice, it shall be the duty of the judge or justice to take good and sufficient security for the payment of all costs which may accrue from the arrest and detention of such fugitive; which security shall be by bond, to the clerk of the circuit court, conditioned for the payment of costs as above; which bond, together with a statement of the costs, which may have accrued on the examination, shall be returned to the office of the clerk of the circuit court; and upon the determination of the proceedings against such fugitive within that county, the clerk shall issue a fee bill as in other cases, to be served on the person named in the bond, or any one of them; which fee bill shall be served and returned by the sheriff, for which he shall be allowed the same fees as are given him for serving notices. If the fees be not paid on or before the first day of the next circuit court to be holden in and for that county, nor any cause then shewn why they should not be paid, the clerk may issue an execution for the same against those parties on whom the fee bill has been served; and when the said fees are collected, shall pay over the same to the persons respectively entitled thereto. The clerk shall be entitled to fifty cents for his trouble in each case, besides the usual taxed fees which are allowed in other cases for like services: Nothing herein contained shall prevent the clerk from instituting suits on said bonds in the ordinary mode of judicial proceedings, if he shall deem it proper.

*Governor
may offer
rewards
when pris-
oners es-
cape, or se-
crete them-
selves when
charged
with certain
offences.*

SEC. 8. If any person charged with, or convicted of treason, murder, rape, robbery, burglary, arson, larceny, forgery, or counterfeiting, shall break prison, escape, or flee from justice, or abscond and secrete himself; in such cases it shall be lawful for the governor, if he shall judge it necessary, to offer any reward not exceeding two hundred dollars, for apprehending and delivering such person into the custody of such sheriff or other officer, as he may direct. The person or persons so apprehending and delivering any such person as aforesaid, and producing to the governor, the sheriff or justices' receipt for the body, it shall be lawful for the governor to certify the amount of such claim to the auditor, who shall issue his warrant on the treasury for the same.

All laws coming within the purview of this act are hereby repealed. This act to take effect on the first day of June next.

APPROVED, Jan. 6, 1827.

GAMING.

AN ACT to restrain Gaming.

*In force
Jan. 16,
1827.*

*Gaming
contracts
void.*

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That all promises, notes, bills, bonds, covenants, contracts, agreements, judgments, mortgages, or

other securities or conveyances made, given, granted, drawn, or entered into, or executed by any person or persons whatsoever, where the whole, or any part of the consideration thereof, shall be for any money, property, or other valuable thing, won by any gaming, or playing at cards, dice, or any other game or games, or by betting on the side or hands of any person gaming, or for the reimbursing or paying any money or property, knowingly lent or advanced, at the time and place of such play, to any person or persons so gaming or betting; or that shall, during such play, so play or bet, shall be void and of no effect.

SEC. 2. Any person who shall, at any time or sitting, by play-
ing at cards, dice, or any other game or games, or by betting on
the side or hands of such as do game, lose to any one or more
persons, so playing or betting, any sum or sums of money, or other
valuable thing, amounting in the whole to the sum of ten dollars,
and shall pay or deliver the same, or any part thereof, the person
or persons so losing and paying or delivering the same shall be at
liberty to sue for and recover the money, goods, or other valuable
thing, so lost and paid or delivered, or any part thereof, or the full
value of the same, by action of debt, detinue, assumpsit, or trover,
from the respective winner or winners thereof, with costs, in any
court of competent jurisdiction: in which action it shall be suffi-
cient for the plaintiff to declare generally, as in actions of debt
or assumpsit, for money had and received by the defendant to the
plaintiff's use: or as in actions of detinue or trover upon a sup-
posed finding, and the detaining or converting the property of the
plaintiff to the use of the defendant, whereby an action hath ac-
crued to the plaintiff, according to the form of this act, without
setting forth the special matter. In case the person or persons
who shall lose such money or other thing, as aforesaid, shall not,
within six months, really and bona fide, and without covin or col-
lusion, sue, and with effect prosecute, for such money or other
thing, by him lost and paid or delivered, as aforesaid, it shall be
lawful for any other person to sue for, and recover treble the value
of the money, goods, chattels, and other things, with costs of suit,
by special action on the case, against such winner or winners afore-
said; one half to the use of the county, and the other to the per-
son suing.

*Money, &c.
lost may be
recovered
back if
more than
\$10.*

*By ordina-
ry actions.*

*The loser to
sue within
six months.*

*Any person
may sue
and recover
treble.*

SEC. 3. All judgments, mortgages, assurances, bonds, notes, bills, specialities, promises, covenants, agreements, and other acts, deeds, securities, or conveyances, given, granted, drawn or executed, contrary to the provisions of this act, may be set aside and vacated by any court of equity, upon bill filed for that purpose, by the person so granting, giving, entering into, or executing the same, or by his executors or administrators; or by any creditor, heir, devisee, purchaser, or other person interested therein; or if a judgment, the same may be set aside, on motion of any person aforesaid, on due notice thereof given.

*Gaming
contracts
set aside in
equity.*

SEC. 4. No assignment of any bill, note, bond, covenant, agreement, judgment, mortgage, or other security or conveyance as aforesaid, shall, in any manner, affect the defence of the person giving, granting, drawing, entering into or executing the same, or the remedies of any person interested therein.

*Assign-
ment not to
affect de-
fence.*

Parties entitled to a discovery.

SEC. 5. In all actions or other proceedings commenced or prosecuted under the provisions of this act, the party shall be entitled to discovery as in other actions, and all persons shall be obliged and compelled to answer, upon oath, such bill or bills as shall be preferred against them for discovering the sum or sums of money, or other thing so won as aforesaid. Upon the discovery and repayment of the money, or other thing so to be discovered and repaid, the person or persons who shall discover and repay the same, as aforesaid, shall be acquitted, indemnified, and discharged from any other or further punishment, forfeiture, or penalty, which he or they might have incurred, by the playing for, or winning such money or other thing, so discovered or repaid as aforesaid. All acts and parts of acts coming within the provisions of this act, are hereby repealed.

Acts repealed.

APPROVED, Jan. 16, 1827.

HABEAS CORPUS.

In force June 1, 1827.

AN ACT regulating the proceeding on writs of Habeas Corpus.

Applications for habeas corpus, how and to whom made.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That if any person shall be, or stand committed, or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the supreme or circuit courts in term time, or any judge thereof, in vacation, for a writ of *habeas corpus*, which application shall be in writing, and signed by the prisoner, or some person on his or her behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained; and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy had been demanded of the person in whose custody the prisoner is detained, and by him refused or neglected to be given; the said court or judge, to whom the said application shall be made, shall forthwith award the said writ of *habeas corpus*, unless it shall appear from the petition itself, or from the documents annexed, that the party can neither be discharged nor admitted to bail, nor in any other manner relieved. Which said writ, if issued by the court, shall be under the seal of the court; if by a judge, under the hand of the judge; and shall be directed to the person in whose custody the prisoner is detained, and made returnable forthwith; to the intent that no officer, sheriff, jailer, keeper, or other person, to whom such writ shall be directed, may pretend ignorance thereof, every such writ shall be endorsed with these words, "by the *habeas corpus* act;" and whenever the said writ shall by any person be served upon the sheriff, jailer, keeper, or other person whatsoever, to whom the same shall be directed, or being brought to him, or being left with any of his under officers or deputies at the jail, or place where the prisoner is detained, he, or some of his under officers or deputies shall, upon payment or

Proceedings thereon.

Officer having custody of prisoner, to bring the

tender of the charges of bringing the said prisoner, to be ascertained by the court or judge awarding the said writ, and endorsed thereon, not exceeding ten cents per mile; and upon sufficient security given to pay the charges of carrying him back, if he shall be remanded, make return of such writ, and bring, or cause to be brought, the body of the prisoner before the court or judge who granted the said writ; or in case of the adjournment of the said court, or absence of the judge, then before any other of the judges aforesaid, and certify the true cause of his imprisonment within three days thereafter, unless the commitment of such person be in a place beyond the distance of twenty miles from the place where the writ is returnable: if beyond the distance of twenty miles, and not above one hundred miles, then within ten days; and if beyond the distance of one hundred miles, then within twenty days after the delivery of the writ as aforesaid, and not longer.

body before the judge or court within three days, if not over 20 miles, and not above 100, then within 10 days, if over 100, then in 20 days.

SEC. 2. Where any person not being committed or detained for any criminal, or supposed criminal matter, shall be confined, or restrained of his or her liberty, under any color or pretence whatever, he or she may apply for a writ of *habeas corpus*, as aforesaid, which application shall be in writing, signed by the party, or some person on his or her behalf, setting forth the facts concerning his or her imprisonment, and wherein the illegality of such imprisonment consists, and in whose custody he or she is detained; which application, or petition, shall be verified by the oath or affirmation of the party applying, or some other person on his or her behalf; if the confinement or restraint is by virtue of any judicial writ or process, or order, a copy thereof shall be annexed thereto, or an affidavit made that the same had been demanded and refused: the same proceedings shall thereupon be had in all respects, as are directed in the preceding section.

How obtained where a person is confined, and not for a criminal matter.

SEC. 3. Upon the return of the writ of *habeas corpus*, a day shall be set for the hearing of the cause of imprisonment or detainer, not exceeding five days thereafter, unless the prisoner shall request a longer time. The said prisoner may deny any of the material facts set forth in the return, or may allege any fact to shew, either that the imprisonment or detention is unlawful, or that he is then entitled to his discharge; which allegations or denials shall be made on oath. The said return may be amended by leave of the court or judge, before or after the same is filed, as also may all suggestions made against it, that thereby material facts may be ascertained. The said court or judge shall proceed in a summary way to settle the said facts, by hearing the testimony and arguments, as well of all parties interested civilly, if any there be, as of the prisoner, and the person who holds him in custody, and shall dispose of the prisoner as the case may require. If it appear that the prisoner is in custody by virtue of process from any court, legally constituted, he can be discharged only for some of the following causes: first, where the court has exceeded the limits of its jurisdiction, either as to the matter, place, sum, or person; second, where, though the original imprisonment was lawful, yet by some act, omission, or event, which has subsequently taken place, the party has become entitled to his discharge; third, where the process is defective in some substantial form required by law; fourth,

Upon the return of the writ when to be heard.

Prisoner may deny the facts in the return.

Returns may be amended.

Court or judge to proceed in a summary way.

Prisoner in custody on process, for what causes he may be discharged.

where the process, though in proper form, has been issued in a case, or under circumstances where the law does not allow process, or orders for imprisonment or arrest to issue; fifth, where, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him; sixth, where the process appears to have been obtained by false pretense or bribery; seventh, where there is no general law, nor any judgment, order, or decree of a court, to authorize the process, if in a civil suit, nor any conviction, if in a criminal proceeding. No court or judge, on the return of a *habeas corpus*, shall, in any other matter, inquire into the legality or justice of a judgment or decree of a court legally constituted. In all cases where the imprisonment is for a criminal, or supposed criminal matter, if it shall appear to the said court or judge, that there is sufficient legal cause for the commitment of the prisoner, although such commitment may have been informally made, or without due authority, or the process may have been executed by a person not duly authorized, the court or judge shall make a new commitment, in proper form, and directed to the proper officer, or admit the party to bail, if the case be bailable.

Judgments, &c. not to be inquired into. Not to discharge for informality, but to recommit.

Prisoner when bailed to give security for his appearance

Witness to be recognized.

Witnesses not entering in recognizance may be committed.

When prisoner is remanded, duty of judge.

SEC. 4. When any person shall be admitted to bail, on *habeas corpus*, he shall enter into recognizance with one or more securities, in such sum as the court or judge shall direct, having regard to the circumstances of the prisoner, and the nature of the offence, conditioned for his or her appearance at the next circuit court, to be holden in and for the county where the offence was committed, or where the same is to be tried: where any court or judge shall admit to bail, or remand any prisoner brought before him or them, on any writ of *habeas corpus*, it shall be the duty of the said court or judge to bind all such persons as do declare any thing material to prove the offence with which the prisoner is charged, by recognizance, to appear at the proper court having cognizance of the offence, on the first day of the next term thereof, to give evidence touching the said offence, and not to depart the said court without leave; which recognizance, so taken, together with the recognizance entered into by the prisoner when he is admitted to bail, shall be certified and returned to the proper court on the first day of the next succeeding term thereof. If any such witnesses shall neglect or refuse to enter into a recognizance as aforesaid, when thereunto required, it shall be lawful for the court or judge to commit him to jail until he shall enter into such recognizance, or be otherwise discharged by due course of law; if any judge shall neglect or refuse to bind any such witness or prisoner, by recognizance as aforesaid, or to return any such recognizance, when taken as aforesaid, he shall be deemed guilty of a misdemeanor in office, and be proceeded against accordingly.

SEC. 5. Where any prisoner, brought up on a *habeas corpus*, shall be remanded to prison, it shall be the duty of the court or judge remanding him, to make out and deliver to the sheriff, or other person, to whose custody he shall be remanded, an order in writing, stating the cause or causes of remanding him. If such pri-

soner shall obtain a second writ of *habeas corpus*, it shall be the duty of such sheriff or other person to whom the same shall be directed, to return therewith the order aforesaid; and if it shall appear that the said prisoner was remanded for an offence adjudged not bailable, it shall be taken and received as conclusive, and the prisoner shall be remanded without further proceedings.

When a second writ is obtained how to proceed.

SEC. 6. It shall not be lawful for any court or judge, on a second writ of *habeas corpus*, obtained by such prisoner, to discharge the said prisoner, if he is clearly and specifically charged in the warrant of commitment with a criminal offence; but the said court or judge shall, on the return of such second writ, have power only to admit such prisoner to bail, where the offence is bailable by law, or remand him to prison where the offence is not bailable; or being bailable, where such prisoner shall fail to give the bail required.

Prisoner not to be discharged, if specially charged with crime. But may be bailed, if bailable, &c.

SEC. 7. No person who has been discharged by order of a court or judge, on a *habeas corpus*, shall be again imprisoned, restrained, or kept in custody, for the same cause, unless he be afterwards indicted for the same offence, or unless by the legal order or process of the court wherein he is bound by recognizance to appear. The following shall not be deemed to be the same cause: first, if after a discharge for a defect of proof, or any material defect in the commitment in a criminal case, the prisoner should be again arrested on sufficient proof, and committed by legal process for the same offence; second, if in a civil suit the party has been discharged for any illegality in the judgment or process, and is afterwards imprisoned by legal process for the same cause of action; third, generally, whenever the discharge has been ordered on account of the non-observance of any of the forms required by law, the party may be a second time imprisoned, if the cause be legal, and the forms required by law observed.

Prisoner once discharged not to be again imprisoned for the cause unless indicted, &c. What shall not be deemed the same cause.

SEC. 8. No person shall be discharged under the provisions of this act who is in custody under a commitment, for any offence exclusively cognizable by the courts of the United States, or by order, execution, or process issuing out of such courts, in cases where they have jurisdiction, or who is held by virtue of any legal engagement or enlistment in the army, or who being subject to the rules and articles of war, is confined by any one legally acting under the authority thereof, or who is held as prisoner of war under the authority of the United States, or who is in custody for any treason, felony, or other high misdemeanor, committed in any other state or territory of the United States, and who, by the constitution and laws of the United States, ought to be delivered up to the executive power of such state or territory; nor shall any negro or mulatto, held as a slave within this state, try his right to freedom, or be discharged from slavery under the provisions of this act, but for that purpose shall be put to his suit for freedom.

When prisoners shall not be discharged.

SEC. 9. If any person shall be committed for a criminal, or supposed criminal matter, and not admitted to bail, and shall not be tried on or before the second term of the court having jurisdiction of the offence, the prisoner shall be set at liberty by the court, unless the delay shall happen on the application of the prisoner. If such court, at the second term, shall be satisfied that due exertions

When he may be discharged for delay.

have been made to procure the evidence for, and on behalf of the people, and that there are reasonable grounds to believe that such evidence may be procured at the third term, they shall have power to continue such case till the third term. If any such prisoner shall have been admitted to bail for a crime other than a capital offence, the court may continue the trial of said cause to a third term, if it shall appear by oath or affirmation that the witnesses for the people of the state are absent, such witnesses being mentioned by name, and the court shewn wherein their testimony is material.

Trials may be continued to a third term.

Removals for delay.

SEC. 10. To prevent any person from avoiding or delaying his trial, it shall not be lawful to remove any prisoner on *habeas corpus* under this act, out of the county in which he or she is confined, within fifteen days next preceding the term of the court at which such person ought to be tried, except it be to convey him or her into the county where the offence with which he or she stands charged is properly cognizable.

Removals from one prison to another, when allowed, must be by legal writ, except in certain cases.

SEC. 11. Any person being committed to any prison, or in the custody of any officer, sheriff, jailer, keeper, or other person, or his under officer or deputy, for any criminal, or supposed criminal matter, shall not be removed from the said prison or custody into any other prison or custody, unless it be by *habeas corpus*, or some other legal writ, or where the prisoner shall be delivered to the constable, or other inferior officer, to be carried to some common jail, or shall be removed from one place to another, within the county, in order to his discharge or trial in due course of law, or in case of sudden fire, infection, or other necessity, or where the sheriff shall commit such prisoner to the jail of an adjoining county, for the want of a sufficient jail in his own county, as is provided in the act concerning jails and jailers, or where the prisoner, in pursuance of a law of the United States, may be claimed or demanded by the executive of any of the United States or territories. If any person or persons shall, after such commitment as aforesaid, make out, sign, or countersign, any warrant or warrants for such removal, except as before excepted, then he or they shall forfeit to the prisoner or party aggrieved, a sum not exceeding three hundred dollars, to be recovered by the prisoner or party aggrieved, in the manner hereinafter mentioned.

Penalty for illegal removals.

Refusal to issue writ.

SEC. 12. Any judge empowered by this act to issue writs of *habeas corpus*, who shall corruptly refuse to issue such writ, when legally applied to, in a case where such writ may lawfully issue, or who shall, for the purposes of oppression, unreasonably delay the issuing of such writ, shall, for every such offence, forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars.

Liability of officers refusing to obey and return the writ.

SEC. 13. If any officer, sheriff, jailer, keeper, or other person, to whom any such writ shall be directed, shall neglect or refuse to make the returns as aforesaid, or to bring the body of the prisoner according to the command of the said writ, within the time required by this act, all, and every such officer, sheriff, jailer, keeper, or other person, shall be guilty of a contempt of the court or judge who issued said writ; whereupon, the said court or judge may, and shall issue an attachment against such officer, sheriff, jailer, keeper, or other person, and cause him or them to be committed

to the jail of the county, there to remain without bail or mainprize, until he or they shall obey the said writ; such officer, sheriff, jailer, keeper, or other person, shall also forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars, and shall be incapable of holding or executing his said office.

SEC. 14. Any one having a person in his custody, or under his restraint, power, or control, for whose relief a writ of *habeas corpus* is issued, who, with intent to avoid the effect of such writ, shall transfer such person to the custody, or place him or her under the control of another, or shall conceal him or her, or change the place of his or her confinement, with intent to avoid the operation of such writ, or with intent to remove him or her out of the state, shall forfeit for every such offence one thousand dollars, and may be imprisoned not less than one year, nor more than five years. In any prosecution for the penalty incurred under this section, it shall not be necessary to show that the writ of *habeas corpus* had issued at the time of the removal, transfer, or concealment therein mentioned, if it be proven that the acts therein forbidden were done with the intent to avoid the operation of such writ.

Removing prisoner to avoid the writ.

SEC. 15. Any sheriff, or his deputy, any jailer, or coroner, having custody of any prisoner, committed on any civil or criminal process, of any court or magistrate, who shall neglect to give such prisoner a copy of the process, order, or commitment, by virtue of which he is imprisoned, within six hours after demand made by said prisoner, or any one on his behalf, shall forfeit five hundred dollars.

Penalty for refusing to give prisoner a copy of commitment.

SEC. 16. Any person who, knowing that another has been discharged by order of a competent judge or tribunal, on a *habeas corpus*, shall, contrary to the provisions of this act, arrest or detain him again for the same cause, which was shown on the return of such writ, shall forfeit five hundred dollars for the first offence, and one thousand dollars for every subsequent offence.

Penalty for arresting a person that has been once discharged.

SEC. 17. All the pecuniary forfeitures incurred under this act, shall inure to the use of the party for whose benefit the writ of *habeas corpus* issued, and shall be sued for and recovered, with costs, by the attorney general, or circuit attorney, in the name of the state, by information; and the amount, when recovered, shall, without any deduction, be paid to the party entitled thereto.

For whose benefit the forfeitures under this inure.

SEC. 18. In any action or suit for any offence against the provisions of this act, the defendant or defendants may plead the general issue, and give the special matter in evidence.

Attorney general and circuit attorneys to prosecute.

The general issue may be pleaded in actions under this act.

SEC. 19. The recovery of the said penalties shall be no bar to a civil suit for damages.

Recovery no bar to civil actions.

SEC. 20. The supreme and circuit courts within this state, or the judges thereof, in vacation, shall have power to issue writs of *habeas corpus*, for the purpose of bringing the body of any person confined in any jail within the same before them, to testify, or be surrendered, in discharge of bail. When a writ of *habeas corpus* shall be issued for the purpose of bringing into court any person to testify, or the principal to be surrendered in discharge of bail, and such principal or witness shall be confined in any jail in this state, out of the county in which such principal or witness is required to be surrendered or to testify, the writ may run into any

Recovery no bar to civil actions.

Habeas corpus, ad testificandum, &c.

county in this state, and there be executed and returned by any officer to whom it shall be directed; and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid, shall, by the officer executing such writ, be returned to the jail from whence he was taken, by virtue of an order of the court, for the purposes aforesaid; an attested copy of which, lodged with the jailer, shall exonerate such jailer from being liable for an escape. The party praying out such writ of *habeas corpus* shall pay to the officer executing the same, such reasonable sum for his services as shall be adjudged by the courts respectively. This act to take effect on the first day of June.

APPROVED, Jan. 22, 1827.

Note. See Act of Feb. 11, 1835, title "Chancery."

HORSES.

AN ACT for improving the breed of Horses.

In force June 1, 1829.

Horses running at large may be taken up.

Notice to the owner. Duty of taker up.

Justice to issue a warrant to geld.

Care to preserve life.

Owner unknown, horse to be advertised. Owner not appearing.

Horse to be gelded. Owner to pay expenses.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall and may be lawful for any person to take up any stoned horse that may be found running at large out of the inclosure of the owner or keeper, more than one year old, and shall give notice thereof to the owner or keeper; and if such owner or keeper shall not take away, or secure the same, allowing him one day for every fifteen miles he may reside from such taker up, the taker up shall take or show the same to a justice of the peace within the county, and if it shall appear to such justice, that said horse is more than one year old, he shall issue his warrant to some person skilled in the business, to geld such stoned horse; or the same may be shown by the taker up, to any horse farrier, or other person of the county, well skilled in the age of horses, and if, upon view and examination, the horse shall be considered of the age of one year old, the person so examining, if he be skilled in the business, may geld and alter the same; if not, he shall give a certificate relative to the age thereof, and the taker up may then take said horse to some person skilled as aforesaid, and have the same gelded, and in performing the operation, reasonable care shall be taken to preserve the life of the animal; but should the owner not be known to the taker up, he shall advertise the same in three of the most public places in the county, for ten days, giving a true description thereof; and if no owner, or person on his behalf, shall by that time appear, and take charge of said horse, such taker up may proceed as above directed, and have the same gelded; and the owner shall pay to the taker up the sum of two dollars, together with reasonable charges for advertising and keeping the same, if the same be advertised, and the person altering shall be paid by the person applying to have the same done.

SEC. 2 It shall not be lawful for any person to alter any horse

that is known to be kept for covering mares, which may accidentally break out of, or from the possession of the owner or keeper, and found running at large: in that case the same shall be taken to the owner or keeper, without unnecessary delay, and the owner or keeper, shall thereupon pay such person so taking up and delivering the said horse, the sum of two dollars; and should the trouble and expense of taking up, keeping and delivering, be extraordinary and great, a further and liberal sum shall be paid by the owner or keeper of such horse to the person so taking up and delivering; but if the owner or keeper of any stoned horse, whether he be kept for covering mares or not, shall negligently or wilfully suffer the same to run at large, out of his inclosure, any person may take such horse up, and forthwith have the same gelded, by some person skilled in the business, which shall be done carefully, and the owner or keeper shall pay to such taker up, the sum of five dollars; the taker up paying the fee or charge for gelding; and the owner or keeper shall, moreover, be liable for, and pay all damages which any person may sustain, in consequence of such horse running at large; and if any horse shall die, or be injured in consequence of such gelding, the same being carefully done by a person skilled in the business, as above contemplated, the owner or keeper thereof shall have no recourse whatever for damages upon such taker up, or person who shall have gelded the same.

SEC. 3. If the owner or keeper of any horse, or other person in his behalf, shall not appear and take charge of the same, after being altered as aforesaid, the taker up shall take care of, feed, and nourish the same, until said horse shall have recovered, and shall then turn the same out, and the owner shall pay to such person a reasonable sum in money therefor.

SEC. 4. If any person shall suffer to run at large, or keep in any place where other creatures can have access to, and become infected, any horse, mare, gelding, mule, or ass, that is known to the owner, or the person having the same in his care and possession, to be afflicted with glanders, distemper, or any other infectious disease, he shall be fined in the sum of twenty dollars, and shall be liable to pay all the damage that may result from such running at large, of such afflicted horse, mare, gelding, mule, or ass, to be recovered before any justice of the peace in the county, if the sum of damages be under one hundred dollars, otherwise in the circuit court.

SEC. 5. Any person letting any stallion to any mare, within any town or village in this state, the same not being incorporated, or immediately in the vicinity thereof, that may expose such conduct to public view, shall be liable to pay a fine not exceeding five dollars, at the discretion of any justice of the peace, to whom complaint shall be made, with costs of prosecution.

SEC. 6. All sums or penalties incurred under the provisions of this act, provided the same do not exceed one hundred dollars, shall be recovered before any justice of the peace; if above that, in the circuit court; and appeals shall be allowed, as in other cases, to said court.

SEC. 7. The act passed on the twentieth day of February,

Horses accidentally breaking away. To be taken to the owner. Who shall pay expense.

Running at large by sufferance.

To be gelded.

Owner to pay costs. And damages.

Gelded horses dying.

Owner not appearing, horse held taken care of.

Glanders; distemper; &c.

Liability of owner.

Indecency in letting horses to mares.

How punished.

Fines recovered before justices. Or circuit court.

Acts re- 1819, entitled "An act for improving the breed of horses," is
pealed. hereby repealed.

This act to take effect on the first day of June next.

APPROVED, Jan. 3, 1829.

IDIOTS, LUNATICS, &c.

In force
Feb. 12,
1823.

AN ACT regulating the estates of Idiots, Lunatics, and persons
distracted, and for other purposes.

Creditors or relations may call a jury to ascertain if persons be idiots, &c.
SEC. 1. *Be it enacted by the people of the State of Illinois, re- presented in the General Assembly,* That whenever any idiot, lunatic, or distracted person has any estate, real or personal, the judge of the circuit court of the county in which such idiot, lunatic, or distracted person lives, shall, on the application of any creditor or relation, or if there be neither creditor nor relation, then any person living in such county, order a jury to be summoned, to ascertain whether such person be a lunatic, insane, or distracted; and if the said jury return, in their verdict, that such person is a lunatic, insane, or distracted, it shall be the duty of the judge aforesaid to appoint some fit person to be the conservator of such idiot, lunatic, or distracted person.

Security to be given by conservators.
SEC. 2. *Be it further enacted,* That the conservator of such estate, so appointed, shall enter into bond with sufficient security, to be approved by the said judge, to the treasurer of the county in which such idiot, lunatic, or distracted person resides, in double the amount of such estate, for the faithful discharge of his duty.

Inventory to be made, and returned to circuit courts.
SEC. 3. *Be it further enacted,* That such conservator shall have the entire care of the estate of such idiot, lunatic, or distracted person, both real and personal; and such conservator shall forthwith make a true and perfect inventory of said estate, and return the same into the office of the clerk of the circuit court of said county, where it shall be kept on file; and shall render his account to the judge of said court, of the management of such trust, when thereto required; and shall be allowed by such judge reasonable compensation for his services. And said court shall have power to remove such conservator for neglect of duty, or mismanagement of his trust, and appoint another in his place.

Income of property to be applied to support and educate children.
SEC. 4. *Be it further enacted,* That it shall be the duty of such conservator to apply the annual income and the profits thereof, to the support of such idiot, lunatic, or distracted person, his or her family. He shall have power to collect all debts due to such person, and to institute suits for that purpose, and to adjust and settle all accounts and debts due from him or her: he may sell or dispose of the personal estate to pay his or her debts, or to support him or her, or his or her families, and to educate the children of the same.

SEC. 5. *Be it further enacted,* That the said conservator may sue and be sued, in every instance, as the representative of the

person so insane, lunatic, or distracted, and execution may issue in the name of, and against the said conservator, as representative as aforesaid; and all the property of such person may be sold to pay his or her just debts, that might or could be sold in other cases.

Conservators may sue and be sued, and property may be sold.

SEC. 6. *Be it further enacted,* That the overseers of the poor in every county, shall take charge of the body of any person so insane, lunatic, or distracted, and shall have power to confine him or her, and shall comfortably support such person, and make out an account thereof, and return the same to the county commissioners' court, whose duty it shall be to make an order, requiring the treasurer of said county to pay the same out of any money in the treasury of said county not otherwise appropriated.

Overseers of poor to take charge of idiots.

SEC. 7. *Be it further enacted,* That if such person, as aforesaid, shall be restored to his or her reason, then what remains of his or her property and estate, shall be returned to him or her; or in case of his or her death, to his or her heirs, executors, or administrators, after a reasonable allowance to said conservator for his services, to be ascertained by the judge of said court.

Persons being restored to their reason to have possession of their property.

APPROVED, Feb. 12, 1823.

AN ACT further to secure the property of Idiots, Lunatics, and
distracted persons.

In force January 19, 1831.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That any person or persons, who shall trade with or credit any idiot, lunatic, or distracted person, either by note, bond, bill, or otherwise, all such contracts, or obligations shall be void.

Not to be dealt with.

SEC. 2. If any person or persons, shall, by trading with, bartering, gaming, or any other device, possess himself, or herself, or themselves, of any property or valuable thing, belonging to any idiot, lunatic, or notoriously distracted person, he, she, or they shall be deemed guilty of swindling, and upon conviction thereof shall be liable to all the penalties as in other cases of swindling, and any person may appear and prosecute with effect.

Dealing with them deemed swindling.

This bill having remained with the council of revision ten days, Sundays excepted, and the general assembly being in session, it has become a law, this 19th day of January, 1831.

Certificate.

A. P. FIELD, *Secretary of State.*

ILLEGITIMATE CHILDREN.

In force July 1, 1827. **AN ACT** to provide for the maintenance of Illegitimate Children.

Proceedings in case of bastardy. **SEC. 1.** *Warrant.* *Trial.* *Recognizance.* *Duty of circuit court.* *Trial there.* *Mother a competent witness.* *Judgment.* *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That when any unmarried woman, who shall be pregnant or delivered of a child, which by law would be deemed a bastard, shall make complaint to any one or more of the justices of the peace of the county where she may be so pregnant or delivered, and shall accuse, under oath or affirmation, any person with being the father of such child, it shall be the duty of such justice or justices to issue a warrant, directed to the sheriff or any constable of such county, against the person so accused, and cause him to be brought forthwith before him or them. Upon his appearance, it shall be the duty of said justice or justices, to examine the said woman, upon oath or affirmation, in the presence of the man alleged to be the father of the child, touching the charge against him. If the said justice or justices shall be of opinion that sufficient cause appears, it shall be his or their duty to bind the person so accused, in bond, with sufficient and good security, to appear at the next circuit court to be holden for said county, to answer to such charge; to which such court said warrant and bond shall be returned. On neglect or refusal to give such bond and security, the justice or justices shall cause such person to be committed to the jail of the county, there to be held to answer such complaint.*

SEC. 2. The circuit court of such county, at their said next term, shall have full cognizance and jurisdiction of the said charge of bastardy, and shall cause an issue to be made up, whether the person charged as aforesaid, is the real father of the child or not, which issue shall be tried by a jury. Such inquiry shall not be *ex parte*, when the person charged shall appear and deny the charge; but he shall have a right to appear and defend himself by counsel, and controvert, by all legal evidence, the truth of such charge.

SEC. 3. If at the time of such court, the woman be not delivered, or be unable to attend, the court shall order a recognizance to be taken of the person charged as aforesaid, in such an amount, and with such sureties as the court may deem just, for the appearance of such person at the next court, after the birth of her child; and should such mother not be able to attend at the next term, after the birth of her child, the recognizance shall be continued until she is able.

SEC. 4. On the trial of every issue of bastardy, the mother shall be admitted as a competent witness, and her credibility shall be left to the jury. She shall not be admitted as a witness, in case she has been duly convicted of any crime, which would by law disqualify her from being a witness in another case.

SEC. 5. In case the issue be found against the defendant, or reputed father, or whenever he shall, in open court, have confessed the truth of the accusation against him, he shall be condemned by the judgment of the said court, to pay such sum of money, not exceeding fifty dollars, yearly, for seven years, as in the discretion

of the said court may seem just and necessary for the support, maintenance, and education of such child; and shall, moreover, be adjudged to pay all the costs of the prosecution, for which execution shall issue, as in other cases of costs. The said defendant, or reputed father, shall give bond and security for the due and faithful payment of such sum of money, as shall be ordered to be paid by the said court, to be paid by him for the period aforesaid; which shall be made payable quarter yearly to the judge of the court of probate, and his successor in office, for the county in which the prosecution aforesaid was commenced; and the same, when received, shall be laid out and appropriated, from time to time, by the said judge, under his order and direction, for the purposes aforesaid; in case the defendant or reputed father shall refuse or neglect to give such security as may be ordered by the court, he shall be committed to the jail of the county, there to remain until he shall comply with such order, or until otherwise discharged by due course of law: *Provided, always,* That the said reputed father, after giving bond with approved security, to the court of probate in said county, conditioned for the suitable maintenance of any such child, for the term aforesaid, shall be permitted to take charge and have the control of his said child; and from the time of the said father taking charge of such child, or should the mother refuse to surrender the said child, when so demanded by the said father, then and from thenceforth the said father shall be released and discharged from the payment of all such sum or sums of money as may thereafter become due against the said father, for the support, maintenance, and education of any such child. If the said child should never be born alive, or being born alive, should die at any time, and the fact shall be suggested upon the record of the said court, then the bond aforesaid shall from thenceforth be void. But when a guardian shall be appointed for such bastard, the money arising from such bonds shall be paid over to such guardian.

SEC. 6. If upon the trial of the issue aforesaid, the jury shall find that the child is not the child of the defendant, or pretended father, then the judgment of the court shall be that he be discharged. The woman making the complaint shall pay the costs of the prosecution, and judgment shall be entered therefor, and execution may thereupon issue.

SEC. 7. If the mother of any bastard child, and the reputed father, shall at any time after its birth, intermarry, the said child shall, in all respects, be deemed and held legitimate, and the bond aforesaid be void.

SEC. 8. No prosecution under this act, shall be brought after two years from the birth of the bastard child: *Provided,* The time any person accused shall be absent from the state, shall not be computed.

SEC. 9. All acts and parts of acts, coming within the purview of this act, are hereby repealed. Such repeal shall in no case affect or impair any rights acquired under the acts hereby repealed. This act shall be in force on the first day of July next.

APPROVED, Jan. 23, 1827.

Reputed father to give bond.

Duty of judge of probate.

How the bond may be discharged.

Reputed father acquitted, mother to pay the costs.

Intermarry, child deemed legitimate.

Limitation of prosecution.

Acts repealed.

IMPEACHMENTS.

In force Jan. 18, 1833. **AN ACT** relating to the administering of Oaths in cases of the trial of Impeachments, or other trials before the Senate.

In trials of impeachments speaker of senate shall administer oaths. Members of senate and secretary thereof to have same power. **Be it enacted by the people of the State of Illinois, represented in the General Assembly,** That it shall be lawful, in all cases of the trials of impeachments, or other trials before the senate, for the speaker of the senate to administer oaths, to the members, witnesses, or any other persons who are required to be sworn; and it shall also be lawful for any member of the senate, secretary, or clerk thereof, to administer oaths to all persons required to be sworn in such cases.

APPROVED, January 18, 1833.

INSPECTIONS.

In force March 23, 1819. **AN ACT** to establish Inspections within this state.

Warehouses. **SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly,** That public warehouses may be kept at the several places which may be pointed out by the commissioners in each county, for an inspection of beef, pork, hemp, flour, tobacco, and all other articles of exportation necessary to be inspected.

Scales. **SEC. 2. Be it further enacted,** That there shall be kept at the several warehouses that may be established, a good and sufficient pair of scales, sufficient to weigh eighteen hundred at least, and a set of small weights, such as ought to be according to the standard weight of the county, and that the proprietors of each warehouse provide the same.

Inspection. **SEC. 3. Be it further enacted,** That all beef, tobacco, hemp, and flour, brought to any of the public warehouses, shall be viewed, inspected, and examined, by two persons thereunto appointed by the county commissioners in each county; and it shall be the duty of the commissioners aforesaid, to appoint such inspectors, when, in their opinion it may be thought necessary; and it shall be the duty of the aforesaid county commissioners to nominate three fit persons for inspectors at each of the several warehouses within their respective counties; the two first in the nomination shall be considered as the acting inspectors for the ensuing year; or in case of sickness, death, or inability in either of the two first inspectors, the third shall be called in to decide on such articles subject to inspection; and the said commissioners shall have power, on complaint in writing, being lodged in the office of the clerk of the county, at their first term after such notice to them given, to summons the inspector or inspectors before them, as the case may be, and as the county commissioners shall judge just; and

said commissioners shall fill all vacancies which may happen at any time during the remainder of the year. Every such inspector, so appointed by virtue of this act, before he enters into the execution of his office, shall give bond with approved security, in the penal sum of two hundred dollars, payable to the governor or his successors in office, conditioned for the true and faithful performance of his duty according to the conditions of this act; which said sum shall be recovered by action of debt before the circuit court, for any wilful or flagrant breach of duty; which bond shall be given and entered into before the county commissioners' court, and lodged in the clerk's office of the county.

Duty of inspectors. **SEC. 4. Be it further enacted,** That all inspectors to be appointed by this act, shall attend at the different warehouses for which they are appointed, on the application of any person who wishes to have his beef, pork, flour, hemp, or tobacco inspected, Sunday excepted; and every inspector neglecting to attend as aforesaid, shall forfeit and pay to the person aggrieved, five dollars, to be recovered before any justice of the peace in the proper county. And the said inspectors shall inspect every article that comes within the purview of this act, in such a manner, that they may be fully satisfied, that each article so inspected shall completely answer in quality to the mark or brand by them made, which shall be marked on the barrel or hogshead, if flour, the letters S F, for superfine, and the letter F, for fine, with the gross weight, and net weight marked in figures on the said barrel: if tobacco, or pork, or beef, the weight in gross and net, marked on the head of said hogshead or barrel.

Rates of inspection. **SEC. 5. Be it further enacted,** That the rate of inspection and storage of the several articles so inspected, shall be fixed by the several county commissioners at their first or second courts in every year.

Hogsheads of tobacco, weight of. **SEC. 6. And be it further enacted,** That each hogshead of tobacco shall weigh not less than nine hundred and fifty weight, or exceed eighteen hundred, net: and the barrel of flour shall weigh one hundred and ninety-six pounds, net weight; each barrel of pork and beef shall weigh not less than two hundred pounds net weight each.

Shall be recorded in inspector's books. **SEC. 7. Be it further enacted,** That it shall be the duty of the several inspectors, under this act, to enter in a book by them kept for that purpose, the mark, number, and weight of the several hogsheads and barrels, by them inspected, together with the name of the inspector and warehouse where each inspection was had.

Oath. **SEC. 8. And be it further enacted,** That each and every inspector, appointed by virtue of this act, before they enter on the duties of their respective offices, shall be sworn before the clerk of the commissioners' court, by which they were appointed, that they will faithfully discharge the duties of their office, without favor, partiality, or affection.

SEC. 9. And be it further enacted, That it shall be the duty of the several inspectors appointed by this act, to furnish the owner or proprietor of any of the above mentioned articles, with a cer-

tificate, the mark, number, and weight of the several articles by them inspected.

This act to be in force from its passage.

APPROVED, March 23, 1819.

*In force
January
12, 1829.*

AN ACT establishing and regulating the inspection of Tobacco in this state.

*Ware-
houses.*

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That it shall be the duty of the county commissioners' courts, in the several counties within this state, from time to time, to authorize the erection of warehouses for the reception and inspection of tobacco, at such places within their respective counties as they may deem necessary and proper. And they shall, moreover, require the person or persons who shall apply for permission to erect the same, to give bond, with sufficient security, in a reasonable penalty, payable to the county commissioners of said county, or their successors in office, for the benefit of the county, with condition to erect such strong and substantial house or houses, as will contain at least one hundred hogshead of tobacco, and as many more as the said county commissioners may think necessary, and also to keep the same in repair as long as it shall continue a public warehouse.

*Persons
applying
for permis-
sion to erect
them to
give bond.*

*Duty of in-
spector.*

SEC. 2. All tobacco which shall be brought to any of the warehouses, established as herein before directed, shall be received, inspected, and examined by one person, to be thereunto appointed, who shall be called *Inspector*, and who shall be appointed in the following manner, to wit: The county commissioners of the several counties wherein any warehouse or warehouses, shall be established according to the provisions of this act, shall, and they are hereby authorized and required, once in every year, at the first term of their courts, or at the next succeeding term, to appoint a person of honest character, and reputed to be skillful in tobacco, as inspector for each and every warehouse within their respective counties: and in case of death, resignation, or removal of any person so appointed, the said county commissioners shall, at the next succeeding term, upon notice of such death, resignation, or removal, appoint a person, qualified as aforesaid, to act as inspector for that inspection, where the vacancy shall have occurred, until the next regular appointment of inspectors, and every inspector shall continue in office until a successor is appointed: *Provided*, that the county commissioners' court may, if they deem it necessary, appoint one additional inspector to each and every public warehouse within the county.

*How ap-
pointed.*

*Vacancies,
how filled.*

*Additional
inspector.*

*To give
bond.*

SEC. 3. Every person who shall be appointed inspector by virtue of this act, shall, before he enters upon the duties of his office, give bond, with sufficient security, in the penalty of not less than one thousand dollars, at the discretion of the county commissioners' court, payable to the said county commissioners, or to

their successors in office, for the benefit of the county, with condition for the true and faithful performance of his duty, while he continues inspector according to the provisions of this act; which bond shall be filed in the clerk's office of the county commissioners' court, and the county treasurer shall commence suit for the recovery of the above penalty, against every inspector failing to discharge the duties of his office, agreeably to the provisions of this act, before any tribunal having jurisdiction thereof, within two months after notice of such failure, under the penalty of five hundred dollars. And every inspector shall also take the following oath or affirmation, in open court, at the time he executes his bond, to wit: "You do solemnly swear, (or affirm, as the case may be,) that you will diligently and carefully view and examine all tobacco brought to the warehouse, whereof you are appointed inspector, and that you will not receive or pass any tobacco which is not in your opinion sound, well conditioned, and merchantable, free from trash, and that in classing the same, you will, according to your best skill and judgment, make a true and correct discrimination between the first and second qualities, and that you will not receive, pass, or stamp any hogshead or cask of tobacco, contrary to the true intent and meaning of the laws in such case made and provided, nor refuse any tobacco that in your judgment is sound, well conditioned, and merchantable, and free from trash, and that you will not change, alter, or give out any tobacco, other than such hogsheads, or casks, for which the receipt to be taken was given, but that you will in all things well and faithfully discharge your duty in the office of inspector, according to the best of your skill and judgment, and according to law, without fear, favor, or affection, malice, or partiality: So help you God." And if any person shall presume to execute his office of inspector, before he shall have given such bond and taken such oath, aforesaid, he shall forfeit and pay five hundred dollars for the use of the county.

*Conditions
thereof.*

*How sued
upon.*

*Oath of in-
spector.*

*Negligence
in giving
bond and
taking oath*

*Inspector
to receive
and deliver
tobacco.*

*Penalty for
not doing
so.*

SEC. 4. The inspectors of tobacco shall attend at their respective warehouses whenever called on, (Sundays and sickness excepted,) by any shipper or raiser of tobacco, to deliver out for exportation such tobacco as remains in the warehouse, and to inspect any tobacco brought to said warehouse; and every inspector neglecting to attend when requested, as aforesaid, shall forfeit and pay to the party aggrieved, fifty dollars for every neglect, or be liable to an action on the case, at the suit of the party aggrieved, to recover all such damages as he or they shall have sustained by any such neglect.

SEC. 5. That all persons having tobacco at a public warehouse, may have equal justice, the inspector shall enter in a book, to be kept for that purpose, the marks and owners' names of all tobacco, brought to their respective warehouses for inspection, in the order in which the same shall be brought in, and such inspector shall view and inspect the same, in due time, as it shall be entered in such book, without favor or partiality, and shall uncase and break, in not less than two places, every hogshead, or cask of tobacco, brought in to be inspected, as aforesaid: and if he shall find the same to be good, well conditioned, merchantable, and free from trash, he shall then determine whether such tobacco is of the first

*Book to be
kept.
What it
shall con-
tain.*

*Manner of
inspection.*

*Tobacco to
be weighed
and marked*

or second quality, shall weigh the same in scales, with weights of the lawful standard, and shall stamp or mark with a scoring iron, the hogshead or cask, with the name of the owner, and of the person by whom raised, (if known,) the name of the warehouse at which inspected, and also the tare of the hogshead or cask, the quantity of net tobacco therein contained, and whether the same is of first or second quality : he shall also issue a receipt for each hogshead of tobacco he shall pass, if requested by the owner, which receipt shall be in the following form, to wit : " At _____ warehouse, county of _____, this _____ day of _____, received of _____, hogsheads of leaf or stemmed (as the case may be) tobacco, of the first or second quality, (as the case may be,) number, mark, and weight as follows :

Receipts to be given.

Form thereof.

Number.	Marks.	Gross.	Tare.	Net.
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to be delivered to the said _____ or order for exportation, when demanded.

Witness my hand : _____."

To be printed or written.

And no inspector shall presume to issue, under any pretence whatsoever, a receipt for tobacco, other than such as shall be printed or written in a plain hand, and according to the above form, under the penalty of one hundred dollars, recoverable by any person who will sue for the same.

Tobacco refused.

SEC. 6. When any tobacco shall be refused by the inspector, the proprietor thereof shall be at liberty to separate the good from the bad for re-inspection, but if he refuse so to do, then it shall be the duty of the said inspector to weigh, prize, and cooper up the same, and mark the gross weight on each cask, and take care of and deliver the same to the owner, for which the inspector shall receive one dollar for every hogshead so delivered, in addition to the inspection fees hereinafter mentioned : and for the prevention of fraud, the inspector shall grant a manifest or certificate, for each hogshead of tobacco, so refused, coopered, and delivered, specifying the weight of the same, and that the same had been inspected and refused : and if any person shall sell refused tobacco, or manufacture the same without such manifest, he shall forfeit and pay the sum of fifty dollars for every hogshead so sold or manufactured, one half to the person suing for the same, and the residue for the benefit of the county in which the offence shall be committed : but it shall be lawful for any person having a hogshead of tobacco refused, to carry the same, with the manifest, to any other warehouse, and the inspector thereat, upon viewing the tobacco, if he esteem it of good quality, first destroying the manifest, he may grant a receipt, as is herein before directed, or shall grant another manifest, (for which one dollar shall be paid,) expressing the review, and that it was the second time refused, after which second refusal, the owner shall not be permitted to carry the tobacco to any other warehouse for re-inspection, but may either have the same picked, or sell the same as refused tobacco, accompanying it with the manifest.

How disposed of.

Selling refused tobacco.

Transferring from one warehouse to another.

SEC. 7. Every hogshead of tobacco inspected at any of the

warehouses established by virtue of this act, the planter or owner of the same shall pay to the inspector fifty cents, whether the same shall be passed or refused, and pay for every hogshead shipped from any of the warehouses aforesaid, the shipper, or exporter, when he demands the same for exportation, shall pay the inspector the further sum of one dollar, in full for coopering and storage, for the first three months, and for each and every month thereafter the same remains in the warehouse, he shall be entitled to twenty-five cents, to be paid when the tobacco is taken away ; and the said inspector, out of the money arising from inspection and shipment of tobacco, shall, in the first instance, pay to the owner, or proprietor of the warehouse, seventy-five cents for every hogshead received thereat, as rent for said warehouse, and shall retain the residue for his own compensation : *Provided*, Such compensation shall in no case exceed two hundred dollars per annum : and whenever the net profits of any warehouse shall exceed the sum necessary for paying the sums aforesaid, the surplus shall be paid into the county treasury, by the said inspector, for the benefit of the county. And every inspector shall, once a year, at the March term of the county commissioners' court of his county, return to the said county commissioners' court a statement of the number of hogsheads of tobacco received at his warehouse during the year, the number passed, and the number refused, and the number delivered for exportation ; and shall account to said county commissioners' court for all moneys, received by virtue of his office, and all disbursements made ; and if any inspector, or keeper of a warehouse, shall make a false return, he shall be liable to indictment, and on conviction shall pay a fine double the amount so kept back and not accounted for, to go to the use of the county.

Fees to inspector.

To owner of warehouse.

Inspector to make return to com. court.

SEC. 8. Every inspector shall store away and secure every hogshead of tobacco, which he shall have inspected during the day, and shall, in case of negligence, be liable to the action of the proprietor of such tobacco, for all damages accruing thereto, by reason of such negligence.

Diligence required of inspector.

SEC. 9. When any new inspector shall be appointed at any warehouse, such inspector shall, and he is hereby required, to give to the person whom he shall succeed in office, a receipt under his hand, containing the numbers, marks, gross, tare, and net weight of all and every hogshead, or cask of tobacco, which shall be then remaining at the warehouse at which he is appointed inspector ; with the delivery of which hogsheads, or casks of tobacco, so remaining, he shall thenceforth be chargeable and liable, but he shall in no wise be accountable for the loss of weight or quality of tobacco, contained in any hogshead, or cask, for which receipt was given by him, as aforesaid : and if any hogshead, or cask of tobacco, be hereafter received by any person whomsoever, and delivered out of any warehouse for exportation by the inspector attending the same, such inspector, from the time of such delivery, shall be forever discharged and acquitted from all actions, costs, and charges for, or by reason of the tobacco contained in any such hogshead, or cask being unsound and unmerchantable, or of less quantity, or of different quality, from that specified in the receipt given

Successors to receipt to their predecessors.

Loss of weight.

Unsound.

for the same, any thing herein contained to the contrary, notwithstanding.

Inspectors to give receipts.

SEC. 10. Inspectors of tobacco, at the several warehouses in this state, shall, immediately on the delivery of every hogshead, or cask of tobacco, at the warehouse whereof they are respectively inspectors, give a receipt for such tobacco, if required by the proprietor, or the person bringing the same to the said warehouse, expressing therein that the same is for uninspected tobacco: every inspector refusing so to do, shall forfeit and pay to the owner of said tobacco five dollars: *Provided*, such delivery is made during the time inspectors are compelled to attend their warehouses.

Lost receipts.

SEC. 11. If any inspector's receipt shall be casually lost, mislaid, or destroyed, the person or persons entitled to receive the tobacco, by virtue of any such receipt, shall make oath before some justice of the peace of the county where the same is payable, to the number and date of such receipt, to whom and where payable, and for what quality of tobacco the same was given, and that such receipt is lost, mislaid, or destroyed, and that he, she, or they, at the time such receipt was lost, mislaid, or destroyed, was lawfully entitled to receive the tobacco, therein mentioned, and shall take a certificate thereof from such justice, and shall advertise the loss of such receipt at the court house of the county in which such inspection may be, on the court day, and at the inspection where the tobacco was bought, for four weeks successively, and shall, moreover, give bond, with sufficient security to indemnify the inspector from loss by the claim of the person who may thereafter produce the original receipt, within twelve months after the notice given of the loss thereof; whereupon the inspector shall grant a duplicate of the same receipt to the person or persons entitled to receive the tobacco, by virtue of the original receipt, and not otherwise; which receipt shall be signed as duplicate: the bond so taken shall be assignable by the inspector taking the same to the person producing the original receipt, who may maintain an action of debt thereupon, and such assignment shall exonerate the inspector from any claim or demand against them, by virtue of the original receipt: *Provided*, nevertheless, that if the principal and security should, at the time of taking such bond be insufficient, then, in that case, the inspector shall be responsible for the value of the tobacco to the person producing such original receipt; and if any person shall be convicted of making a false oath, or procuring a false certificate, in the case aforesaid, such person shall suffer as in cases of wilful and corrupt perjury.

Entry of marks, numbers, &c.

SEC. 12. Every inspector shall carefully enter in a book to be kept for that purpose, the marks, numbers, gross, tare, and net weight of all tobacco, viewed and stamped by them, as herein before directed, and on what vessel, or boat, the same shall have been shipped; and shall also, with every vessel, or boat load of tobacco, send a list of the numbers, marks, gross, tare, and net weight of every hogshead or cask of tobacco then delivered, to be given to the master of the boat, or vessel, in which the same shall be shipped.

SEC. 13. All stemmed tobacco, not laid straight, whether the

same shall be packed, loose, or in bundles, shall be accounted unlawful tobacco, and no tobacco packed in hogsheads, which exceed fifty-four inches in the length of the stave, or thirty-six inches at the head, within the *crow*, making reasonable allowance for prizing (which allowance shall not exceed two inches above the guage) in the prizing head, and which shall be bound with eight hoops, shall be passed or received, but the owner of such tobacco, packed in hogsheads or casks of greater dimensions than above expressed, shall be obliged to repack the same, in sizable casks, before the same shall be passed or stamped by the inspector, nor shall any hogshead be so passed or stamped, unless the net weight thereof shall be at least eight hundred pounds.

Lawful and unlawful tobacco, what.

SEC. 14. Any inspector who shall alter, change, or deliver out any hogshead of tobacco, other than the one for which the receipt to be taken in was given, shall forfeit and pay one hundred dollars for every hogshead so altered, changed, or delivered out; and if any inspector shall fail or refuse to deliver any hogshead of tobacco, when the same shall be demanded for exportation, or shall deliver such tobacco without an order from the owner thereof, he shall, in either case, forfeit to the owner double the value of the tobacco which he shall so refuse to deliver, or deliver wrongfully.

Tobacco, how delivered.

SEC. 15. Any inspector who shall take, accept, or receive, directly or indirectly, any gratuity, fee, or reward, for any thing so done, in pursuance of this act, other than the payments and allowances herein before mentioned and expressed, upon being convicted thereof, shall forfeit and pay the sum of one hundred dollars, to be recovered with costs, to the use of the county wherein the offence shall have been committed, and shall, moreover, be removed from office: and if any person shall offer any bribe to any inspector, for any thing by him to be done in pursuance of this act, other than the payments and allowances herein before mentioned and expressed, such person so offending, upon being thereof convicted, shall forfeit and pay one hundred dollars, for the use of the county wherein the offence shall have been committed.

Penalty for bribery.

For offering bribe.

SEC. 16. Any person who shall alter or change the face of a note, for passed or refused tobacco, or who shall alter or cause the stamps or marks on any hogshead of inspected tobacco, whether passed or refused, shall be deemed guilty of forgery, and punished as in other cases of forgery.

Forging note, receipt, stamp, &c.

SEC. 17. Any person who shall erect a warehouse in pursuance of this act, shall, in addition to the requisitions herein before mentioned, be required to erect a strong and sufficient prize within the same, and also to provide a pair of strong scales, or patent balances, and correct weights, to weigh at least fifteen hundred pounds.

Prize to be erected.

And weights provided.

SEC. 18. The county commissioners' court of counties, where-in one or more warehouses shall be erected, shall, at the term whereat the appointment of inspector is made, appoint a discreet householder, of ability and integrity, to act as commissioner of warehouses, for one year, whose duty it shall be to see that the warehouses in his county are kept in good repair, that proper scales and weights are provided, kept in repair, examined, and

Commissioner of warehouses

His duty.

compared with the standard weights of the county; once in six months, at least, to visit every warehouse in his county, and see that the tobacco therein is properly stowed away and secured, and that the inspectors diligently discharge their duties; and if he shall discover in any inspector, any negligence or breach of his duty, he shall report the same to the county commissioners' court at the next term thereof; whereupon said inspector shall be proceeded against according to law; and the commissioner so appointed shall be allowed two dollars for every day he shall be necessarily employed in performing the duties prescribed by this act, to be paid out of the county treasury: *Provided*, that such compensation shall not exceed thirty dollars in one year.

To report delinquent inspectors.

His compensation.

Inspectors exempted from militia duty, &c.

Mode of recovering penalties.

Private warehouses and inspectors.

Tobacco not to be removed unless, &c.

Proviso.

Owners not removing tobacco.

To be advertised.

And sold.

Costs and fees paid.

SEC. 19. The inspectors of tobacco under this act shall be, and they are hereby exempted from militia duty, except in case of actual invasion and insurrection, and also from serving on juries.

SEC. 20. All penalties and forfeitures in this act contained, the mode of recovery and application of which are not specially set forth, shall be recovered by action of debt at the suit of the county treasurer, and shall be applied to lessening the county tax.

SEC. 21. If before the erection of a public warehouse in any county, the quantity of tobacco raised or brought therein shall, in the opinion of the county commissioners' court, require the appointment of one or more inspectors, the same shall be appointed, and when appointed may proceed to examine and inspect any tobacco which may be lodged in any private warehouse, and shall pass or refuse the same, and do all other acts that are required by this act, in case of inspection in public warehouses, and such inspection shall be to all intents and purposes legal. The owner of such private warehouse shall not suffer any tobacco to be removed after inspection, unless by order of the inspector, who shall have as complete control over the same as if it were stored in a public warehouse; and shall be responsible in the same manner to the owner thereof; and any proprietor or owner of a private warehouse, in which tobacco has been inspected and stored, who shall deliver or suffer the same to be removed without an order from the inspector, as aforesaid, shall forfeit double the value of the tobacco so delivered or suffered to be removed, to be recovered by the inspector for the benefit of the owner of such tobacco: *Provided*, that there shall be no tobacco inspected in a private warehouse, where there is a public one erected in the same county, and prepared for the reception and inspection of tobacco: *Provided*, also, that it shall be lawful for any citizen of this state, who wishes to export tobacco without inspection, to do so, any law to the contrary notwithstanding.

SEC. 22. If the owner of any tobacco, deposited in any warehouse, shall suffer the same to remain there for a longer time than two years, without paying the fees for storage and keeping the same, it shall and may be lawful for the inspector or keeper of the warehouse to advertise the same, either in some newspaper, the nearest printed in the state, or by setting up six advertisements in writing, in the most public places in the county, for six weeks previous, fairly to expose and sell the same for the best price that can be had in cash, and the overplus, if any, after paying all fees and

costs, to be returned to the owner, if called for within five years from the day of sale; if not called for, the same to go to the county: and if any person shall suffer any property other than tobacco to remain in any warehouse established under this act, or any public or private warehouse now established, or which may hereafter be established, for a longer term of time than fifteen months, from the time of depositing the same, without paying the fees for storage, the keeper or inspector may, in like manner, advertise and sell the same, for what the same will bring in cash; and the surplus, if any, to be paid over to the owner, or county as above stated. This act to be in force from and after the passage thereof.

APPROVED, January 12, 1829.

INTEREST.

AN ACT to regulate the interest of Money.

In force April 2, 1833.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the rate of interest upon the loan or forbearance of any money, goods, or things in action, shall continue to be six dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or a shorter time: *Provided*, that when the parties expressly agree upon an amount of interest, not exceeding the rate of twelve per centum per annum, it shall be legal, any thing in this section to the contrary, notwithstanding; and the several courts in this state are hereby required to give judgment accordingly.

SEC. 2. No person or corporation shall, directly or indirectly, accept or receive in money, goods, discounts, or things in action, or in any other way, any greater sum, or greater value for the loan, forbearance, or discount of any money, goods, or things in action, than as above described.

SEC. 3. Whenever, in any action brought on any contract or assurance, for the payment of money, or any other thing, it shall appear to the court before which such action shall be tried, by the pleading on the case, and on application of the defendant, that a greater rate of interest shall have been directly or indirectly reserved, discounted, or taken, than is allowed by this act, the defendant shall recover his full costs, and the plaintiff shall forfeit threefold the amount of the whole interest reserved, discounted, or taken, and shall have judgment, and execution for the balance only, which may remain due upon said contract or assurance, after deducting threefold the amount of said interest, one third part of which shall be paid to the defendant, and the remaining two thirds shall be paid into the county treasury of the county in which such suit shall have been instituted.

SEC. 4. That if any person or corporation, shall, directly or indirectly, contract to accept or receive in money, goods, discounts, or things in action, any greater sum or greater value, for

Rate of interest.

No greater rate of interest than is above allowed shall be received.

In cases of usury.

Defendant shall recover full costs.

Where suit shall be instituted on a usurious

contract by a person not a contracting party. the loan, forbearance, or discount of any money, goods, or things in action, than is prescribed by this act, he, she, or they shall forfeit and pay to the person suing for the same, threefold the amount of the whole interest so contracted, to be reserved, discounted, or taken : *Provided*, said suit be not commenced by either of the contracting parties ; and if so, then the amount so recovered shall be paid into the county treasury of the county where such suit shall have been instituted.

Where usurious interest has been allowed the representatives of the person so paying it may sue. SEC. 5. Every person, who for any such loan, discount, or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, and his personal representatives may recover in an action against the person who shall have taken or received the same, and his personal representatives threefold the amount of the money so paid, or value delivered above the rate aforesaid, either by an action of debt in any court having jurisdiction thereof, or by bill in chancery in the circuit court, which court is hereby authorized to try the same : *Provided*, said action shall be brought, or bill filed within two years from the time when the right thereto accrued.

Evidence. SEC. 6. In the trial of any action wherein it shall appear by the pleadings, that the fact of usury shall be put in issue, it shall be lawful for the debtor, the creditor being alive, to become a witness, and his testimony shall be received as evidence, and the creditor, if he shall offer his testimony, shall be received as a witness, together with any other legal evidence that may be introduced by either party.

SEC. 7. This act to take effect from and after the first day of April next.

APPROVED, Feb. 28th, 1833.

In force March 2, 1819.

AN ACT regulating the interest of Money.

Interest allowed at the rate of six per cent. SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That creditors, (except as hereinafter excepted,) shall be allowed to receive at the rate of six per centum per annum, for all moneys after they become due on any bond, bill, promissory note, or other instrument of writing, on any judgment recovered before any court or magistrate authorized to enter up the same, within this state from the day of signing judgment until the effects be sold, or satisfaction of such judgment be made, likewise on money lent, on money due on the settlement of accounts from the day of liquidating accounts between the parties, and ascertaining the balance, on money received to the use of another, and retained without the owner's knowledge, and on money withheld by an unreasonable and vexatious delay of payment : *Provided, always,* That nothing in this act contained, shall be so construed as to limit the rate of interest, for the payment of which an express contract hath been made : *And provided, also,* that no bank or monied institution shall have the right to demand

or receive a greater or higher rate of interest than six per centum per annum, and all and every species of contract made by any bank or monied institution, by which a greater or higher rate of interest shall be stipulated to be paid, shall be and the same is hereby declared to be fraudulent and wholly void.

APPROVED, March 2, 1819.

INSOLVENT DEBTORS.

AN ACT for the relief of Insolvent Debtors.

In force June 1, 1829.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That whenever any debtor shall refuse to surrender his or her estate, lands, tenements, goods, or chattels, for the satisfaction of any execution which may be issued against the property of any such debtor, it shall and may be lawful for the plaintiff in such execution, or his or her attorney or agent, to make affidavit of such fact before any justice of the peace of the county ; and upon filing such affidavit with the clerk of the court from which the execution issued, or with the justice of the peace who issued such execution, it shall be lawful for such clerk, or justice of the peace, as the case may be, to issue a *ca. sa.* against the body of such defendant in execution.

SEC. 2. The judges of probate, in the several counties in this state, shall have the sole power, in the first instance, to hear and determine all applications for discharge from imprisonment for debt under this act.

SEC. 3. When any person shall be arrested for debt on execution, or on original process, for the purpose of being held to bail, and shall be desirous of releasing his or her body from such arrest or imprisonment, by delivering up his or her property, it shall be the duty of the sheriff, or other officer having the custody of such debtor, to convey him or her before the judge of probate of the county in which such arrest is made.

SEC. 4. It shall be the duty of the judge of probate, before whom any such debtor shall be brought as aforesaid, to require of such debtor a full, fair, and complete schedule of all his or her estate, real or personal, including money, notes, bonds, bills, obligations, and contracts for money, or property of any and every description, or kind, name, or nature whatsoever, together with a true and perfect account of all the debts which he or she shall or may be owing at the time, which schedule shall be subscribed by the debtor ; who shall also take the following oath or affirmation, to wit : " I do solemnly swear (or affirm, as the case may be) that the schedule now delivered, and by me subscribed, contains, to the best of my knowledge and belief, a full, true, and perfect account and discovery of all the estate, lands, tenements, hereditaments, goods, chattels, and effects, unto me in any wise belonging, and such debts as are unto me owing, or unto any person or persons

for me, or in trust for me, and of all securities and contracts where- by any money may become due or payable, or any advantage or benefit accrue to me, or to my use, or to any person or persons for me, or in trust for me; that I have not lands, money, or any other estate, real or personal, in possession, reversion, or remain- der, which is not set forth in this schedule; nor have I, at any day or time, directly or indirectly, sold, lessened in value, or otherwise disposed of, all or any part of my lands, money, goods, stock, debts, securities, contracts, or estate, whereby to secure the same, or to receive, or expect to receive, any profit or advantage there- from, to defraud any creditor, or creditors, to whom I am indebted in any wise whatsoever; and also, that this schedule contains a true and perfect account of all the debts which I owe to any and every person whatsoever." Which oath, or affirmation, shall be subscribed by the debtor, and certified by the judge, as may all oaths, or affirmations, which it may be necessary for him to ad- minister in the discharge of the duties assigned him by this act.

Which shall be cer- tified by the judge.

Creditors may con- test.

SEC. 5. Any creditor of such debtor shall have the right to ap- pear before the judge of probate, and contest the truth of such schedule; and may for that purpose call such witnesses as he or she shall deem necessary; and the judge shall issue subpoenas, and compel the attendance of witnesses, in the same manner as the judges of the circuit courts do in term time.

Examina- tion may be adjourned.

SEC. 6 The judges shall have power to adjourn or continue the examination of any such debtor to any convenient time, not exceeding thirty days, upon the said debtor giving security for his appearance, and also for the surrender of all the goods, chattels, and estate mentioned in his schedule, at the day or time to which such examination may stand continued or adjourned.

Upon giv- ing bond.

Assignee may be ap- pointed.

SEC. 7. If, after full investigation and fair examination of the debtor and the witnesses, if any, it shall appear to the judge that the proceedings on the part of the said debtor are fair, just, and honest, it shall be the duty of the judge to name some fit person to act as assignee of the said debtor; and such debtor shall immedi- ately, by endorsement on the back of such schedule, assign all, or so much of his property therein mentioned, as will, in the opinion of the judge, be sufficient to pay all the debts, interest, costs, and charges, in such schedule mentioned, to the person so named as assignee; and such assignment, so made, shall absolutely vest in such assignee, all the interest of such debtor in and to the said estate so assigned for the use of the creditor or creditors of such debtor.

Discharge, how grant- ed.

SEC. 8. Whenever the said debtor shall produce to the judge a receipt of the assignee of such debtor, certifying that he has received all the estate, property, goods, chattels, and effects so as- signed to him, then it shall be the duty of the said judge to give to such debtor a discharge, in writing, from imprisonment; and the officer having the custody of the said debtor, shall, on the production of such discharge, forthwith liberate such debtor from arrest or im- prisonment; and such discharge from arrest or imprisonment, shall exempt the said debtor from arrest on account of any debt men- tioned in said schedule, until the same shall be vacated by due course of law.

And of what effect.

SEC. 9. Any creditor thinking himself or herself aggrieved by any such discharge, shall and may be allowed an appeal to the next circuit court to be held in the county, upon his or her giving bond, with security, to prosecute the said appeal at the next circuit court, and to pay all costs and damages which may accrue to the party seeking such discharge; which bond shall be made payable to the judge of probate, or his successor in office, as shall all other bonds which may be given by authority of this act; and the said bond shall be filed with the judge of probate.

Appeal.

SEC. 10. Upon application of any debtor for a discharge from imprisonment under this act, and refusal of the judge to make an assignee, or to grant a discharge from imprisonment, the said ap- plicant shall be allowed to appeal to the next circuit court to be held in said county, upon said applicant's entering into bond, with security, in such sum as the judge shall require, to appear on the first day of the next term of the circuit court, and abide the decision thereof; and also, that he or she will not sell or dispose of, or re- move or lessen in value, any or all of the estate or property men- tioned in the schedule of such applicant, but that the same shall be forthcoming, and subject to the order of the said court; and upon such debtor entering into such bond, it shall be the duty of the said judge to certify the whole of the proceedings which have been had before him, to the said circuit court, on the first day of the term thereof. All appeals shall be prayed before the judge at the time of trial, or within ten days thereafter.

SEC. 11. No assignee shall sell any property assigned to him by any debtor as aforesaid, during the pendency of any appeal to the circuit court, unless the same be of a perishable nature, and such as will be materially injured in its value by delay.

Property of a perishable nature only, to be sold.

SEC. 12. The circuit court, at the term to which the proceed- ings shall be returned, shall (unless for good cause) proceed to hear and determine the matter, and shall empanel a jury to find the facts, at the request of either party, admitting all necessary ev- idence, and shall make such order therein as justice and equity may require, affirming or reversing the whole, or any part, of the proceedings of the judge of probate, and doing all things that may be necessary to effect the objects of this act.

Proceed- ings in the circuit court.

SEC. 13. In every case where a debtor is arrested on affidavit, charging such debtor with fraud, and being desirous of releasing his or her body from arrest or imprisonment, it shall be the duty of the sheriff, or other officer having the custody of such debtor, forthwith to convey him or her before the judge of probate of the county, whose duty it shall be to issue a *venire* to the sheriff, or other officer having custody of such debtor, commanding him forth- with to summon seven reputable householders of the neighborhood, to assemble before the said judge as a jury, who shall be sworn to try the fact of fraud with which such debtor shall stand charged.

Arrests for fraud, and trial there- on.

SEC. 14. If, after full hearing of the parties, the jury shall find a verdict of "guilty of fraud," against such debtor, he or she shall be imprisoned until he or she shall comply with the requisitions of the fourth section of this act: but if the jury find such debtor "not guilty of fraud," then the maker of such affidavit, as aforesaid, shall pay all such costs as may have accrued in consequence of

Verdict of the jury.

And judg- ment there- on.

such arrest or imprisonment, and the debtor shall be discharged from such arrest or imprisonment: *Provided, always,* that either party shall have the right to an appeal upon the same conditions as in other cases under this act.

Jury allowed to debtor in case of refusal.

Judgment.

SEC. 15. Every debtor arrested on any civil suit or process, shall, upon going before the judge of probate, if he shall desire the same, be allowed a jury of seven householders of the neighborhood, who shall be sworn to try the fact of refusal to surrender the property of such debtor for the benefit of his or her creditor; and if the jury return or find a verdict of "guilty of such refusal," then such debtor shall be compelled to surrender his or her property, or schedule his or her property, as provided in the fourth section of this act, but if the jury find such debtor "not guilty" of refusing to surrender, then such debtor shall be forthwith discharged.

Duty of assignee.

To advertise.

And sell personal property.

And lands.

SEC. 16. Every assignee, appointed by authority of this act, shall, within the space of thirty days after the assignment of the property mentioned in the schedule or inventory of any insolvent debtor, advertise all the personal property, goods, or chattels, mentioned in such schedule, at the door of the court house, and in three other public places in the county, giving twenty days notice of the time and place of such sale, at which time and place such assignee shall proceed to sell all such personal property, goods, and chattels, for the highest price which can be obtained, on a credit of nine months, for which he shall take bond, with sufficient security; and the said assignee shall also advertise at the same places, as above required for personal property, the lands and tenements contained in such schedule, which shall be sold at the door of the court house, on the first day of the circuit court next to be holden in the said county, between the hours of eleven in the morning, and sun setting of the said day; but if the said circuit court should not sit on such day so appointed for its sitting, then such lands and tenements shall be sold in the same manner as if said court had been held at the time appointed, to the highest bidder, on a credit of twelve months, the said assignee taking bond, with sufficient security, for the payment of the same.

To make a deed.

And acknowledge the same.

To settle with the court of probate.

Notice.

Distribution.

SEC. 17. It shall be the duty of every assignee, who shall sell any lands or tenements, by or under authority of this act, upon payment of the purchase money being made by the purchaser, to make and execute to such purchaser, his heirs, executors, administrators, or assigns, a deed of conveyance for the same, which shall be acknowledged in the same manner as deeds are acknowledged by sheriffs, and such deed shall vest in the purchaser, all the rights of the assignor, to such lands and tenements.

SEC. 18. It shall be the duty of every assignee of any insolvent debtor, within eighteen months after such assignment, to make a settlement of the estate of such insolvent debtor before the judge of probate, giving thirty days public notice of the time of making such settlement; and the judge of probate shall make such order concerning the distribution thereof, as is made in cases of insolvency of deceased persons; and such assignee shall pay the creditors of such insolvent debtor, the amount of their several dividends,

within thirty days after such settlement; and if the whole amount of debts shall not have been collected at the time of making such settlement, then such assignee shall continue to collect such outstanding debts, and, from time to time, make dividends of such sums as shall come to his possession, until the whole is collected and paid, first deducting such charges and fees as are by law allowed; and if any thing shall remain in the hands of any such assignee, after paying all such debts as are mentioned in such schedule, together with the cost thereon, then such assignee shall pay over the same to the said debtor, his or her heirs, executors, administrators, or assigns.

Subsequent collections.

And payments.

Balance remaining in his hands.

SEC. 19. The judge of probate is hereby authorized to allow every assignee, who shall be appointed under the provision of this act, such compensation as shall be reasonable and just for the services which he shall be necessarily called upon to perform, in the discharge of his duties as assignee.

Compensation to assignee.

SEC. 20. The judge of probate shall be allowed the same fees for services rendered by authority of this act, as he is allowed for similar services in the court of probate, in addition to the sum of two dollars for the examination of each applicant for a discharge under this act, and one dollar for each discharge by him granted to such debtor, as aforesaid.

Fees of judge of probate.

SEC. 21. In case of the insolvency of any judge of probate within this state, the same proceedings shall be had against him, before any county commissioner of the county, as are prescribed for other debtors by this act.

Judge of probate insolvent to proceed before co. com.

SEC. 22. Any debtor who shall be convicted of taking a false oath, under any of the provisions of this act, shall be deemed guilty of willful perjury, and shall suffer the pains and penalties imposed by law therefor.

False oath.

SEC. 23. Any debtor, who shall obtain a discharge under this act, and who shall have acted honestly and without fraud, shall forever after be discharged from imprisonment, on account of any debt or debts that he may owe at the time of obtaining such discharge, and that may be contained in the schedule required to be made by this act; and the certificate of the judge of probate of such discharge, shall protect such debtor from imprisonment, in all cases where any action may be brought against him for any such debt or debts, as aforesaid.

Effect of discharge under this act.

SEC. 24. An act entitled "An act to abolish imprisonment for debt in certain cases," approved, February 17, 1823; and the 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, and 22nd sections of an "Act establishing courts of probate," approved, February 10, 1821, are hereby repealed. This act to take effect on the first day of June next.

Acts repealed.

APPROVED, Jan. 12, 1829.

INTERNAL IMPROVEMENTS.

In force Feb. 27, 1837. AN ACT to establish and maintain a general system of Internal Improvement.

Three fund com's. to be elected by joint ballot. SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That there shall be elected by the joint vote of the present general assembly, and biennially thereafter, a board of fund commissioners to consist of three members, who shall be practical and experienced financiers, and whose term of office therein shall expire biennially, and who shall be eligible to re-election. Each member of the board before entering into the discharge of the duties of his office, shall severally take and subscribe an oath or affirmation, faithfully, honestly and diligently to discharge the duties of his said office, and shall execute a bond to the Governor, and his successors in office, for the use of the State, in the penal sum of fifty thousand dollars, with good and sufficient security, to be approved by the Governor or the person administering the government, conditioned for the faithful discharge of the duties of his office, imposed upon him, or thereafter to be imposed upon him, by law; and for the faithful accounting for all moneys, that shall or may come into his hands as fund commissioner; and all vacancies which may occur in the board of fund commissioners during the recess of the legislature, shall be filled by appointment by the Governor, which appointments shall continue until the end of the next session of the general assembly, and until their successors are elected and qualified, and who shall give bond and take an oath in the same manner as is required by the foregoing part of this section of other commissioners.

Majority of board may do business. SEC. 2. A majority of the board of fund commissioners shall constitute a quorum for the transaction of business; and it shall be the duty of the said board of fund commissioners to contract for and negotiate all loans authorized to be effected by the legislature, on the faith and credit of the State, for objects of internal improvements or other purposes, unless otherwise provided for, on the best and most favorable terms for the interests of the State; and shall sign and execute bonds or certificates of stock therefor, in the manner directed by law, and shall receive, manage, deposit and apply all sums of moneys arising from said loans, in such manner as shall, from time to time, be provided for by law, and shall make quarterly reports to the auditor of public accounts, or to such other authority as the legislature may direct, on the first Mondays of March, June, September and December annually, of all the proceedings of the said board.

Shall keep record of their proceedings; shall be open to inspection. SEC. 3. The board of fund commissioners shall keep a fair and complete record of all their proceedings, together with a full, minute and accurate account of all their fiscal transactions as commissioners, with a record of all official letters and correspondence, written and received, in relation to the subject of their duties as fund commissioners, in well bound books, to be provided for the purpose, which records shall at all times be open at their office to

the inspection of the governor, the auditor of public accounts, the attorney general, and to any member of the general assembly. In order to enable the board to keep said record, they are hereby authorized to appoint a secretary of the board, whenever, in their opinion, the business of the board may render it necessary; which secretary, before entering upon the discharge of his duties, shall be required to take an oath or affirmation, faithfully and diligently to perform the duties of his appointment, and shall enter into bond to the governor of the State, and his successors in office, for the use of the State, in such penal sum, and with such securities as the board may, by an order direct, conditioned for the faithful and diligent discharge of his duties, as secretary of the board of fund commissioners, and for the safe keeping of all books, vouchers, and papers, which may come to his hands as secretary as aforesaid. The members of the board of fund commissioners shall each be entitled to receive as a full compensation for their services at the rate of five dollars per day, for each and every day they may be necessarily employed in the discharge of their duties. And the board may allow to the secretary of the board, such compensation for his services, as they may deem reasonable and just.

Compensation of commissioners and secretary. SEC. 4. That for the purpose of promoting and maintaining a general system of internal improvement in this state, and of uniting its various branches under the same supervision and direction, (excepting the construction of the Illinois and Michigan canal,) there shall be created a board of public works, to consist of seven members. Vacancies to be filled by governor. Board of public works created, to consist of seven members. SEC. 5. That for the purpose of promoting and maintaining a general system of internal improvement in this state, and of uniting its various branches under the same supervision and direction, (excepting the construction of the Illinois and Michigan canal,) there shall be created a board of public works, to consist of seven members, one from each judicial circuit, to be elected biennially by the joint vote of the general assembly, and who shall be styled "the Board of Commissioners of Public Works," who shall continue in office for two years, and until their successors are elected and qualified, but who shall be eligible to be re-elected. Any vacancy which may occur in the board by death, refusal to act, resignation, removal out of the State or otherwise, shall be filled by an appointment by the Governor, which appointment shall expire at the end of the next session of the general assembly, and the incumbent thus appointed shall take the like oath of office, and enter into the like bond as is required of the members elected by the legislature, before he shall enter into the discharge of his duties as one of said commissioners.

Shall take an oath and give bond. SEC. 5. Each of the members of the board of commissioners of public works, previously to entering into the discharge of the duties of their offices respectively, shall take and subscribe an oath or affirmation, faithfully, honestly, impartially and diligently to discharge the duties of his office; and shall execute a bond to the Governor and his successors in office, for the use of the State of Illinois, in the penal sum of twenty thousand dollars, with two or more good and sufficient securities to be approved of by the Governor, or person administering the government of the State, conditioned for the faithful, honest, impartial and diligent discharge of the duties of his office, as one of the commissioners of the board of commissioners of public works and for the faithful disbursement of, and accounting for, all moneys entrusted to him as one of said commissioners; and no commissioner shall be allowed to have in his hands, at any one time, more than twenty thousand dollars;

Penalty of bond. Not to have more than \$20,000 at a time, on hand.

and every sum advanced to, or received by him, shall be deemed to remain in his hands, until its application shall have been properly accounted for by the necessary vouchers, to be filed with, and audited by, the board of fund commissioners, or such other authority as may be, from time to time, directed by the Legislature to examine and audit said vouchers.

Time of holding their first meeting to be at the seat of government, shall elect one of their number President.

SEC. 6. The members of the said board of public works, after having been qualified, and having executed bonds in the manner herein before directed, shall on, or as soon as convenient before the first Monday in April, next ensuing their election, hold their first meeting at the seat of government and organize the board, by electing one of their number to be the President of the said board; and by appointing a Secretary of the board, who, before entering into the discharge of the duties of his appointment, shall take an oath or affirmation, faithfully and truly to discharge his duties as secretary of the board of commissioners of public works; and shall enter into bond to the Governor and his successors in office, for the use of the State, in such penal sum and with such security as the board shall order and direct; conditioned for the faithful, true and diligent discharge of his duties as said secretary, which may devolve upon him by law, or under the directions, resolutions and orders of the board.

May appoint secretary, shall enter into bond.

SEC. 7. The board of commissioners of public works, when organized and constituted as aforesaid, shall be authorized to locate, superintend, direct and construct on the part and behalf of this State, all works of Internal Improvements which have been or shall be authorized to be undertaken, prosecuted, and constructed by the State, either in whole or in part, (excepting the Illinois and Michigan canal) and the charge and superintendence of all such internal improvements, excepting as aforesaid, shall be vested in said board, and the said board of commissioners of public works shall do and perform such services and duties, as may from time to time, be imposed upon the said board by law. The said board shall hold semi-annual meetings on the first Mondays of June and December in each and every year, at the seat of government of this State; and the said board shall have authority to choose a President *pro tempore*, in the absence of the President, at any meeting of the board, and to adjourn from time to time, to meet at any other place they may think proper; and the president shall have power to call special meetings of the board, when in his opinion the public interests may require it. Three of the members shall constitute a quorum for the transaction of business, at any stated or special meeting of the board, when convened under the authority aforesaid. Each of the members of the board shall be allowed to receive as a compensation for their services, the sum of five dollars per day, for every day necessarily employed in the discharge of their duties, and they shall and may allow to the secretary of the board as a compensation for his services, such sum as they may think reasonable and just. And the acting commissioner for the fourth judicial circuit, shall cause to be surveyed a route commencing at Charleston, via the county seat of Clark county, to the most eligible point on the great Wabash river, between York and the line dividing the States of Indiana and Illinois,

Commissioner shall superintend all works authorized by State.

Shall hold semi-annual meetings at seat of government, may choose a president protem.

May adjourn from time to time to meet at any other place.

President shall have power to call meetings. Compensation of said members.

Route to be surveyed from Charleston to Wabash river in

and make a report to the next session of the general assembly, of the utility of the state constructing a rail road on said route, together with an estimate of the probable cost of constructing the same; *Provided*, however, that if in the opinion of the board of public works, after said survey and estimates have been made, that it would be best calculated to promote the interests of the points above named, and the country through which said road may pass, to build a good turnpike road, then and in that case they shall report accordingly.

Clark county. To report to the next Legislature the cost of said.

SEC. 8. In the meetings of the board, they shall determine the general outline of the operations in relation to such works of Internal Improvements as may be authorized by law, and as either in part or in whole may be placed under their direction and supervision; determining questions of importance submitted to the board by the acting commissioners on the respective lines or works, or by other persons connected with the public works, in relation thereto; and shall examine and audit accounts relating to the expenditures of moneys on the works under their charge and supervision; make estimates of the probable amount of funds which may from time to time be required to meet expenditures in the prosecution thereof, and shall enter said estimates at large in a book to be provided for that purpose; and cause authenticated copies thereof to be served on the board of fund commissioners, in due time to enable said fund commissioners to provide the necessary amount of the payment of said estimates;—and shall also, at their said meetings, make out the reports of their proceedings, which shall be required by law to be made and filed by them; and shall attend to such other matters and things, as shall arise in the discharge of their duties, and as are necessary to be passed upon by the board. The board shall also, at any of their meetings, whenever the progress and situation of the works under their charge shall render it necessary, from time to time, agree upon and assign to the individual members of the board, in special charge, a specific portion or division of the public works in progress, and the member to whom any such specific portion or division shall be assigned, shall superintend the same as acting commissioner thereon, under the general direction and during the pleasure of the board; and shall make detailed reports to the board of his proceedings, at its semi-annual meeting, and as much oftener as is practicable and convenient.

Shall determine general outline of operations.

Shall examine and audit accounts.

Make estimates of the cost of works; shall enter same at large on their books, shall cause copies thereof to be sent to fund commissioners.

To divide said work among said members.

SEC. 9. The board shall cause to be kept in well bound books to be provided for the purpose, a fair and complete record of all the proceedings and doings of the board, and also an accurate and separate account of all the moneys expended by them, in the survey and construction of each respective work under their direction; exhibiting also the amounts received by the board, and each and every member thereof, to be applied by them, on the respective works under their direction and supervision; which said books shall at all times be open at the office of the board, to the inspection of the governor, auditor of public accounts, attorney general, members of the board of fund commissioners, and members of the general assembly, and to such other authorities as the legislature may, from time to time, authorize to inspect the same.

Keep record of proceedings.

Amount of money expended.

Said books to be open to examination and inspection.

SEC. 10. The said board of commissioners of public works

Shall make semi-an-

annual reports.

shall make, under their hands, semi-annual reports of their proceedings to the governor, or person administering the government, on the first Mondays in June and December, or within thirty days thereafter, which reports shall contain a detailed statement of their operations and proceedings for the preceding six months, and shall exhibit the amount of moneys received and expended by the board, in the examination and survey of routes and locations of the public works, and in the prosecution and construction thereof, showing specifically the amount expended on each respective work up to that date ; which reports, or an outline thereof, the governor shall cause to be forthwith published in some newspaper printed and published at the seat of Government ; and shall cause all said reports to be filed in the office of the secretary of state ; and shall lay a certified copy thereof before the general assembly, on the first week of their sessions or as soon thereafter as the same may be received by him. And if the said board shall at any time refuse or neglect to make any semi-annual reports required by this act, or any other reports hereafter required by the legislature to be made, within the time specified for making the same, the members of the said board so refusing or neglecting to make such reports, shall forever thereafter be ineligible to re-election, and moreover shall be liable to impeachment for misdemeanor in office : *Provided*, that if at any stated meeting of the board, there should not be a quorum in attendance the minority met may make a report of the facts within their knowledge, relating to the progress of the works and the expenditures thereon ; and the making of such report shall exonerate the said minority from the above penalties ; and *Provided*, also, that if the absent members are detained from the meeting of the board by sickness, or other causes beyond their control, they also may exonerate themselves from the above penalties by rendering to the legislature a satisfactory reason for their absence from the board, and failure to join in such report.

Shall show amount expended on each work.

Governor shall cause same to be filed in secretary's office. Shall lay the same before the legislature. Com'rs refusing to make said reports, to be ineligible to re-election and liable to impeachment.

May employ engineers &c.

Term of appointments of said board not to extend beyond sixty days after the expiration of their appointments.

Sec. 11. The said board of commissioners of public works, shall have power to employ such engineers, agents, superintendents and other assistants as the interests of the state shall in their opinion demand, to enable them to discharge the duties required of them by law ; and to pay such engineers, agents, superintendents and assistants such sums as, in their opinion, may be a reasonable compensation for the services they may perform, and to remove said officers at pleasure : *Provided*, that the term of any appointments made by the board shall not extend more than sixty days beyond the expiration of their own term of office ; and the said board shall also have authority to organize their corps of engineers, by the appointment of principal or principals, and subordinates, and assign to each their respective and appropriate charges and duties, in such manner as the said board may deem the interests of the state to demand ; and shall also have authority to purchase and procure such mathematical and other instruments, camps, camp equipage, stationery, supplies, teams, wagons and other apparatus, and employ so many laborers and assistants as shall be deemed necessary by them, to ensure the correct and efficient discharge of the duties of the engineering department of the public works ; and shall and may provide such offices in which to transact

the business of the board and of the engineering department as they may deem the interest of the state to require.

Sec. 12. The board of commissioners of public works shall cause such examinations and surveys to be made of the several rivers, which may from time to time be directed by law to be improved, to ascertain the nature and extent of the obstructions and impediments to the navigation thereof, as shall be necessary to enable the board to determine upon and prosecute the most eligible and useful plans of making such improvements ; and shall require estimates of the probable costs thereof, under the oath or affirmation of the engineer in charge of making the respective surveys and examinations ; and shall also cause minute and accurate examinations and surveys to be made of the proposed routes of all rail roads and other contemplated improvements which may from time to time be authorized by law, and placed under the charge, supervision and direction of the board ; and before placing any of the said works under contract, shall require of the engineer or engineers under whose direction and charge the said examinations and surveys were made and executed, respectively, a report of said examination and survey, attested by the oath or affirmation of the said engineer or engineers, describing particularly the localities and nature of the routes of the respective rail roads and other improvements ; the topography of the country over which it may pass ; the facilities for obtaining materials for the construction of the work ; with such other information as the engineer may deem to be useful and necessary ; or which he may be required to collect and report by an order of the board ; which report shall be accompanied with plans and profiles of the route, and of the mechanical structures proposed to be constructed thereon ; and specifications of the work to be executed ; together with minute estimates of the probable cost thereof ; which said reports shall be filed by the secretary of the board, and shall be open to the inspection of all persons desirous of obtaining contracts on the route during office hours, under such regulations and restrictions as the board may adopt, to preserve the original documents from loss or injury : *Provided*, That the board may exhibit manuscript or printed copies thereof, in lieu of the originals.

Shall cause examination and survey of rivers to be made.

Engineers shall report examinations, plans, profiles, specifications and estimates.

Provido.

Sec. 13. The board of commissioners of public works shall execute the works under their charge and supervision by contract : *Provided*, however, that whenever any job will not admit of such definite specification as to enable contractors to make specific bids for the same, or when jobs are too small and inconsiderable to justify the attention of contractors, the board or acting commissioner on the line may cause the job to be accomplished by laborers to be employed and paid by the board or the acting commissioner.

Shall execute works by contract. Provido.

Sec. 14. That so soon as any work, or portion or division thereof, shall be ready to be placed under contract, the acting commissioner, to whose special charge and supervision the same shall have been assigned by the board, agreeably to the provisions of the eighth section of this act, shall give notice of the time and place of letting, by advertisements to be published in at least five newspapers printed in this state, and in such other newspapers as the

When acting com'rs to give notice of time and place of letting out contracts.

board may deem the interests of the state to demand, at least once in each week for five weeks next preceding the day of said lettings, which advertisements shall contain a brief description of the nature and amount of work which will be offered to contractors, and shall state the time within which contractors will be required to commence and complete the work; with such other information as the board may deem advisable. The bids or proposals shall be sealed, and shall state a specific and definite price for the work to be performed, and shall be received by the acting commissioner on the work, on, or at any time previous to the day of letting. The acting commissioner on the line, and at least one other member of the board, together with the principal engineer in charge of the work, shall attend at the time and the place of the letting; and the said commissioners shall, at the hour of four o'clock in the afternoon of the said day, close the further receipt of proposals, and immediately proceed to open, examine, and compare the several bids which shall have been made for each respective job of work proposed to be let; and shall let the same to the lowest responsible bidder or bidders therefor: *Provided*, That the said commissioners shall have authority to refuse any and all bids, which, in the opinion of said commissioners and principal engineer, may be deemed exorbitant; and shall and may proceed to re-advertise and let the work so overbid, at such time and place as the board may think most advisable for the interests of the state. All bids and proposals for work, received by any commissioner shall be retained, and handed over to the secretary of the board, who shall file and preserve the same. Proposals for contracts to furnish and deliver materials for the construction of works, may be received in such manner, and upon such notice, as in the opinion of the board may be most expedient to promote the interests of the state; but all proposals for such service shall be received in writing and filed and preserved in like manner as proposals for the execution of work: *Provided*, That negotiations and contracts for rail road iron, to be obtained from foreign countries, may be carried on and made in such manner as the board may deem best calculated to advance the interests of the state.

Sealed proposals.

Each job of work to be let to lowest responsible bidder. Proviso.

Bids shall be filed by secretary.

Proviso.

Under what conditions and reservations, contracts to be entered into.

See act of July, 1837.

SEC. 15. All contracts shall be entered into, under such conditions and reservations, to be expressed at large in said contracts, as shall enable and fully authorize the board of commissioners of public works, to declare the same to have been abandoned by the contractor or contractors, in all cases where the work shall not be fully commenced at the time and according to the terms of said contract; and also in cases whenever in the opinion of the acting commissioner and engineer in charge of the work, the contractor or contractors shall neglect or refuse to prosecute his contract with an assiduity and efficiency that shall give a reasonable assurance to the said commissioner and engineer of its uniform progress, and final completion, within the time specified in the said contract; or when in the opinion of the principal engineer, said contractor shall perform the work imperfectly, and shall refuse or neglect forthwith to remedy such imperfect performance;—and the job so declared to be abandoned may forthwith be re-let by the board, without the let, hindrance or disturbance of the former contractor or contrac-

tors, or of any person or persons claiming to act for or under him or them. The contracts shall also contain a provision, prohibiting the sub-contracting of jobs or any portion thereof, without the consent of the board, under the penalty of a forfeiture of contract, and of all retained per centage remaining unpaid thereon.

Sub-contract prohibited.

SEC. 16. The contracts shall be signed and sealed by the acting commissioner on the work, for the time being, on the part and behalf of the board, and shall be binding on the State; and shall also be signed and sealed by the contractor or contractors; and triplicate copies thereof shall be thus executed. One of said copies shall be retained by the contractors; one shall be filed in the office of the Auditor of Public Accounts; and the other filed in the office of the board of commissioners of public works, and recorded by the secretary of the board, in a book to be furnished for that purpose; and the said secretary shall furnish the acting commissioner with copies of said contracts whenever thereunto required.

How contracts to be signed & sealed.

Copies to be furnished by secretary.

SEC. 17. During the progress of the public works, fair and correct estimates of the probable amount of work actually done by the contractors, on each respective job, shall be made by the engineer in charge of the work, or by an assistant assigned to that service, at stated periods, not exceeding two months asunder; and there shall be paid to the contractor, a sum not less than sixty-seven per centum, nor more than eighty-five per centum on the amount of the work actually performed, at the discretion of the acting commissioner on the work; and the balance shall be retained as a security to the State for the faithful performance of the contract, until the full completion thereof, according to its terms; at which time the work shall be accepted if done according to contract, and the balance in full shall be paid to said contractors; and the acting commissioner, in making his decision as to the equitable proportion of the estimates to be retained as security for the State, shall be governed by the diligence and efficiency of the contractors in the prosecution of their contracts; by the aggregate amount of per centum already retained, and by the probable risk of injury to the unfinished works, to be apprehended from freshets or other casualties, which risk shall rest with the contractors; and in the event of any contract being declared to be abandoned, for any of the causes mentioned in the fifteenth section of this act, all retained per centage on the amount of estimates, shall be forfeited to the use of the State. Copies of all estimates made during the progress of the work as above directed, shall be transmitted to the secretary of the board of commissioners of public works, to be by him filed and preserved for future use and reference.

Estimates by engineers.

Contractors how paid.

Copies of estimates transmitted, to be filed by Secretary.

SEC. 18. The said board of commissioners of public works, is hereby authorized and required to adopt such measures as may be necessary to commence, construct and complete within a reasonable length of time, the following works, viz:—

Board to adopt measures to construct following works:
1st Great Wabash river,
\$100,000.

First. The improvement of the navigation of the Great Wabash river, in that part of the same over which the states of Indiana and Illinois have concurrent jurisdiction, for which improvement the sum of one hundred thousand dollars is hereby appropriated; which said appropriation the said board of public works are hereby

authorized and required to expend in said improvements, in conjunction with the state of Indiana, in equal amounts and for like objects. And the said board of commissioners of public works are hereby authorized and empowered to co-operate with the board of internal improvement of Indiana, or with such other authority or authorities of said state as are or may be put in charge of the expenditure of appropriations made by the State of Indiana for the improvement of said river, in the survey and examinations of the obstructions to the navigation, and in the location, construction, completion and management of all works at the joint and equal expense of both states, which by the joint boards or other authorities aforesaid, may be deemed of the greatest utility, to render said river navigable at all stages of water, for steam and other boats, in that part of the said river above specified; and also in the disposition, use and management of the water powers created or rendered available by the construction of said works of improvements.

Board authorized to co-operate with Indiana.

Board may enter into compact with Indiana.

And the said board of commissioners of public works are hereby authorized and empowered to enter into an agreement and compact on the part of the State of Illinois, with the board of internal improvement of the State of Indiana, or such other authority as said state has, or may authorize and empower to enter into such agreement and compact on the part of said State of Indiana, for the joint and mutual co-operation of the two states, in the said survey, location, construction, completion and management of the improvements and works hereby contemplated; and for the joint and mutual use and management of, and jurisdiction over all hydraulic power created or made available thereby; which said agreement and compact when ratified by the governor of the State of Indiana, or by such other authority as the said State of Indiana may authorize to ratify the same, and make it binding on the said state, shall be valid and binding on the State of Illinois: *Provided, however,* that if there should be any incoherence between the laws of Indiana and of this state, as to the specific mode of advertising and letting contracts, and of paying the estimates made during the progress of the work, it shall and may be lawful for the board of commissioners of public works to conform to the mode prescribed by the laws of Indiana, in so far as the improvement of the Wabash river alone may be concerned, until the discrepancies aforesaid may be remedied by legislative enactments, or by the contemplated compact aforesaid; any thing in the fourteenth and seventeenth sections of this act to the contrary notwithstanding. And it is hereby made the duty of the governor of this state to transmit to the governor of the State of Indiana, as soon as practicable after the passage of this act, a certified copy of the preceding part of this section thereof.

How compact ratified.

Proviso.

2d. Illinois river \$100,000.

Second. The improvement of the navigation of Illinois river, west of the third principal meridian, for which the sum of one hundred thousand dollars is hereby appropriated; and it is hereby made the duty of the board of commissioners of public works to apply and expend the said appropriation in removing or overcoming the most formidable obstructions and barriers to the steamboat navigation in the said river, and to adopt and prosecute such plans for said improvements, as in their best judgments will be most bene-

ficial and efficient to render the said river navigable for steam and other boats at all stages of water therein.

Third. The improvement of the navigation of Rock river, for which the sum of one hundred thousand dollars is hereby appropriated; and the board of commissioners of public works, shall apply and expend the said appropriation in removing or overcoming the most formidable obstructions to the steam boat navigation in the said river; and shall commence their operations and expenditures, by removing or overcoming the obstructions of the above descriptions, which are nearest the mouth of the said river; and shall progress thence up stream with said improvements, so far as the said appropriation will extend; and the said board may adopt and execute such plans for said improvements, as in their judgment will be best calculated to render the said river navigable for steam, keel and other boats, of the description and dimensions, suited to said river in its course within the jurisdiction of this State; having due regard to the permanency of the structures they may erect, and to the greatest and most useful amount of water powers to be created or made available thereby, for the use of the State.

3d. Rock river, \$100,000.

Fourth. The improvement of the navigation of the Kaskaskia river, for which the sum of fifty thousand dollars is hereby appropriated, and the said board of commissioners of public works are hereby authorized and required to apply and expend the said appropriation on the said river, on improvements adapted to steam boat, keel boat and flat boat navigation, and to commence the line of said improvements, at the obstruction to said navigation nearest the mouth of the river, and to progress upwards, giving the low water channel in the said river, at the shoalest places therein, a convenient and uniform depth for the uninterrupted passage of keel and flat boats, and of steam boats of such dimensions, as in the judgment of the board will be best adapted to the navigation of the said river, and shall also remove such timber obstructions to the navigation as may be deemed injurious or dangerous to the said navigation; and the said board, in adopting and executing their plans for the said improvements, shall have a due regard to the greatest and most useful amount of water power, to be created or rendered thereby for the use of the State, as a proper and economical location and construction of the works will admit of, *Provided,* said board of commissioners of public works shall equalize the expenditure of said fifty thousand dollars, as near as may be on all portions of said river, susceptible of improvement from its junction with the Mississippi, upwards, in removing the obstructions from its channel, in making short cuts across the bends, and in clearing off the trees from the margin of the same.

4th. Kaskaskia river to \$50,000 appropriated.

Fifth. The improvement of the navigation of the Little Wabash river, for which the sum of fifty thousand dollars is hereby appropriated, and the said board of commissioners of public works are hereby authorized and empowered to expend and apply the said appropriation in the improvement of the navigation of the said river, in such manner as they shall deem most advisable for the public good, to render the navigation thereof safe and practicable for steam, keel, and flat boats, and the said board shall have due regard to the greatest and most useful amount of water power to be

5th. Little Wabash river to which \$50,000 appropriated.

created by the works they may erect for the improvement of the said river for the use of the State. And the said board of commissioners of public works, in the construction of dams across any of the rivers aforesaid, are hereby authorized to construct and keep in repair suitable chutes in the said dams, for the accommodation of the ordinary flat boats, and others descending navigation in the rivers, whensoever, in their opinion, the costs and practicability of construction, and the interests of the State will justify the construction and maintenance thereof.

6th. West-
ern mail
route to
which
\$250,000
appropri-
ated.

Sixth. Two hundred and fifty thousand dollars of the first loans to be effected under the provisions of this act, are hereby appropriated and shall be expended under the directions of the board of commissioners of public works, on the great western mail route, leading from Vincennes to St. Louis as follows, viz: Thirty thousand dollars on that part thereof lying between Vincennes and Lawrenceville embracing what is commonly called the "purgatory swamp." Fifteen thousand dollars on the Little Wabash river bottom, between the Big Muddy branch thereof and the main river, at McCawley's bridge in Clay county. Thirty thousand dollars on that part of said road lying between the bluffs and the Mississippi river in the county of St. Clair; and the residue of said appropriation shall be expended in bridging and repairing said mail route as equally as practicable, on other parts thereof, and the said board of public works are authorized to erect and have kept, toll gates on any portion of said route, on which the said appropriation may in part be expended, as they may deem proper, and establish such reasonable rates of toll thereon, as in their opinion will protect the rights of the State, and not be burthensome to the people.

7th. Rail
road from
the city of
Cairo, to
termina-
tion of Ill.
& Mich.
canal \$3-
500,000.

Seventh. A rail road from the city of Cairo at or near the confluence of the Ohio and Mississippi rivers, to some point at or near the southern termination of the Illinois and Michigan canal, via Vandalia, Shelbyville, Decatur and Bloomington, and from thence via Savannah to Galena: for the construction and completion of said rail road and appendages, the sum of three millions and five hundred thousand dollars is hereby appropriated.

8th. Rail
road from
Alton to
Mt. Car-
mel, & a
rail road
from Alton
to Shaw-
neetown,
\$1,600,000.

Eighth. A southern cross rail road from Alton to Mount Carmel via Edwardsville, Carlyle, Salem, Fairfield and Albion; and also a rail road from Alton to Shawneetown to diverge from the aforesaid southern cross rail road at or near Edwardsville, and thence from said diverging point via Lebanon in St. Clair county, Nashville in Washington county, Pinckneyville in Perry county, Frankfort in Franklin county, and Equality in Gallatin county, for the construction and completion of which said rail roads and appendages, the sum of one million and six hundred thousand dollars are hereby appropriated.

9th. North-
ern cross
rail road
from
Quincy to
Indiana
state line,
\$1,800,000

Ninth. The northern cross rail road from Quincy on the Mississippi river, via Columbus and Clayton in Adams county, Mount Sterling in Schuyler county, Meredosia and Jacksonville in Morgan county, Springfield in Sangamon county, Decatur in Macon county, Sidney in Champaign county, and Danville in Vermillion county, and thence to the State line, in the direction of Lafayette, Indiana, which rail road shall cross the Sangamon

river at some eligible point below the north and south forks thereof, for the construction and completion of which said rail road and appendages, the sum of one million eight hundred and fifty thousand dollars is hereby appropriated exclusive of the necessary sum for constructing a bridge over the Illinois river, to be appropriated whenever said bridge may be authorized by the legislature.

Tenth. A branch of the central rail road, to commence at some eligible point on said road where a direct line from Hillsboro' to Shelbyville would intersect the same, or within one mile of the said point of intersection, and to run from thence via Shelbyville in Shelby county, Charleston in Coles county, Paris in Edgar county, and thence to the State line in a general direction for Terre Haute Indiana, for the construction of which said branch rail road, and appendages, the sum of six hundred and fifty thousand dollars is hereby appropriated; and it shall be lawful for the "Alton, Wabash and Erie rail road company" incorporated January 16, 1836, to connect the westerly end of their proposed rail road at its point of commencement on the central rail road, with the said branch rail road, on such terms and conditions as is provided in this act, for making such connections; and the said company are hereby exonerated from all liability to construct so much of their proposed rail road as lies east of the central road, *Provided*, That said company or corporators, release to the State in the manner hereinafter provided, all claims under their charters, to construct said eastern end thereof, and also:

10th. A
branch of
the central
rail road to
commence
at or as
near said
road, where
a direct
line from
Hillsboro'
to Shelby-
ville would
intersect the
same, to In-
diana State
line
\$550,000.

Eleventh. A rail road from Peoria in Peoria county via Canton in Fulton county, Macomb in McDonough county, Carthage in Hancock county, to Warsaw on the Mississippi river; for the construction of which said rail road and its appendages, the sum of seven hundred thousand dollars is hereby appropriated.

11th. Rail
road from
Peoria to
Warsaw
\$700,000.

Twelfth. A rail road from Lower Alton via Upper Alton, and Hillsboro' to the central rail road, so as to intersect the rail road from Terre Haute to the same, and the sum of six hundred thousand dollars is hereby appropriated for the completion of the same.

12th. Rail
road from
Lower Al-
ton to cen-
tral rail
road
\$600,000.

Thirteenth. A rail road from Belleville via Lebanon, to intersect the rail road from Alton to Mount Carmel, at the nearest and most eligible point on said road, and the sum of one hundred and fifty thousand dollars is hereby appropriated for the completion of the same.

13th. Rail
road from
Belleville to
intersect
rail road
from Alton
to Mt. Car-
mel
\$150,000.

Fourteenth. A rail road from Bloomington in McLean county, to Mackinaw town in Tazewell county, to diverge a fork at said Mackinaw town: one branch or fork of said rail road to run to the Illinois river and connect with the Peoria and Warsaw rail road, at Peoria; and the other branch to run through Tremont to Pekin, for which the sum of three hundred and fifty thousand dollars is hereby appropriated.

14th. Rail
road from
Bloomington
to
Mackinaw
town where
it shall
fork,
\$350,000.

Fifteenth. There shall be appropriated the sum of two hundred thousand dollars of the first moneys that shall be obtained under the provisions of this act, to be drawn by the several counties in a ratable proportion to the census last made, through which no rail road or canal is provided to be made at the expense or cost of the State of Illinois; which said money shall be expended in

15th.
\$200,000
appropri-
ated out of
first mo-
neys drawn
to counties

not furnished with a rail road or canal. the improvement of roads, constructing bridges and other public works.

Entire appropriations not to be expended unless necessary.
 SEC. 19. Nothing contained in the seventh, eighth, ninth, tenth, and eleventh articles of the forgoing sections shall be so construed as to authorize and render necessary the expenditure of the whole of any of the said appropriations, on the respective works, for the construction of which the several appropriations are made, unless the whole amount shall be requisite to construct the same, in the general manner and according to the general plan specified in this act; and any surplus of any or either of the said appropriations not needed in the completion of the said several works and appendages thereof, including the necessary machines, and motive powers to put the same into full and complete operation, and fitted to accommodate the trade, transportation and travel thereupon; and the establishment of depots, store houses and other buildings, weighing machines, and other apparatus necessary thereto, shall be deemed an unexpended balance of said appropriation, and be subject to future appropriation by the legislature.

Internal Improvement fund how constituted.
 SEC. 20. That for the purpose of constructing the several works of internal improvement contemplated by this act, there shall be constituted a fund for internal improvements, which shall consist of all moneys which shall and may be raised by the sale of stocks or State bonds, or in any other manner by virtue of loans authorized by law; and of all appropriations which may be made from time to time out of the revenue of the State arising from land taxes; and of all moneys arising and to be derived from the tolls and water, and other rents of all the said works of internal improvements; and of all rents, issues and profits arising from the lands purchased or entered by the State for the purpose of promoting and aiding in the construction and completion of said works, either by leasing or selling the same; and of the proceeds of all lands which may be donated by the general government in aid of internal improvements in this State; and of all grants or donations which may be received from individuals, companies, corporations, or the general government to aid in the completion of said works; and, also, all the profits and interests which may accrue from the said works, in any manner whatsoever, together with the balance, (after paying the debt due from the State, to the school, college, and seminary funds,) of the moneys to be received from the Treasury of the United States under the provisions and operation of an act of Congress, providing for a distribution of the surplus revenue of the United States by depositing the same with the several States; which amount of said deposit so funded shall be charged to the said fund for internal improvement and repaid out of the same, when the said deposit shall be demanded by the general government;—and together with all net profits to arise from bank and other stocks hereafter to be subscribed for and owned by this State;—after liquidating the interest on loans contracted for the purchase of such bank or other stocks.

Duty of board of fund commissioners.
 SEC. 21. The board of fund commissioners are hereby authorized and required on the part and behalf of this State, to contract with any individual, company or corporation at such time as the said board may find it necessary to meet the re-payment of the

aforesaid deposit of the general government, or the payment of other legitimate demands upon the funds for internal improvements, and at such times as they may be advised by the board of commissioners of public works, that the same will be needed in the purchase of lands or prosecution of the works under their charge, supervision or direction for a loan or loans, from time to time, in all not exceeding the sum of eight millions of dollars, on the faith of this State, which said loan or loans shall bear an interest not exceeding six per cent. per annum, payable semi-annually at the treasury of this State, or at some bank or banks in the cities of Boston, New York or Philadelphia, as may be agreed upon, and the principal of which to be re-imbursable at the pleasure of the State, at any time after the first day of January, Anno Domini, one thousand eight hundred and seventy; and to be so negotiated, that the proceeds may be drawn for and bear interest at any time as early as practicable, when the board of fund commissioners may be advised by the board of commissioners of public works, that said money will be required for the progress of any of the works of Internal Improvements for the construction of which said funds are appropriated by this act, and the said board of fund commissioners shall issue for said loans, transferable certificates, to be denominated "Certificates of Illinois Internal Improvement Stock," in the name of the State of Illinois, which when signed by the members of the said board, or by a majority of them, and countersigned by the auditor of public accounts of this State, shall be valid and binding on this State; and to facilitate the purposes herein contemplated, the said board of fund commissioners shall have power to make such arrangements relative to obtaining the loans, the payment of interest thereon, and the transmission and deposit of the money arising therefrom, as they may deem conducive to the best interests of the State, as shall not be inconsistent with the provisions of this act, or of any subsequent act of the legislature in relation thereto.

Faith of State pledged to repay principal & interest of money borrowed.
 SEC. 22. For the punctual payment of the interest and final redemption of the principal of all sums of money which may be borrowed under the provisions of this act, there shall be and hereby are irrevocably pledged and appropriated, all the interest and claim of the State of Illinois in all the works of Internal Improvements, to the construction of which, either in whole or in part, the moneys loaned under the provisions of this act, shall have been appropriated and expended, together with all lands, waters, and water powers thereunto appertaining, and the privileges thereby created, and the rents, issues and profits thereof, together with the net proceeds of all tolls collected thereon, for the sufficiency of which to pay the interest and principal of the said loans, as the same shall become due and payable, the State of Illinois doth hereby irrevocably guarantee, and for which payments and redemption well and truly to be made and effected, the faith of the State of Illinois is hereby irrevocably pledged.

Moneys received by fund commissioners.
 SEC. 23. All moneys which may be received by the board of fund commissioners or either member thereof from the proceeds of loans or otherwise under the provisions of this or any subsequent act of the Legislature, as soon as conveniently may be after receipt

of the same, be deposited by them in some safe bank or banks to be selected by the board of fund commissioners, and to be placed to the credit of the board of fund commissioners of the State of Illinois, and shall make such contracts with the said bank or banks, for the reception and payment of the said deposits on such terms and conditions, as will best tend to make the said sums as productive as practicable to the fund to which it may belong, and at the same time insure the prompt payment of all drafts which may become necessary to be drawn by the board, to meet the expenditures on the public works in progress or for the purpose of purchasing lands, and for the payment of interest on loans; and upon the further condition to be expressed in the contract with the said bank or banks, that the Cashier or President thereof shall deliver or transmit by mail or otherwise to the Auditor of Public Accounts of this State, monthly statements of the accounts of the said board of fund commissioners of Illinois, as the same shall stand upon the books of the bank, on the last day of every month; and it is hereby made the duty of the said Auditor of Public Accounts to receive and file said statements in his office, and to give notice to any of said deposite banks, of the failure to receive from the said banks any of the said monthly statements whenever delayed beyond a reasonable period, and in order to enable the said Auditor to discharge said duties, the board of fund commissioners shall notify the Auditor of Public Accounts whenever the said board shall open an account with any bank under the provisions of this section and also of the time of closing any such accounts.

Statements to be transmitted to Auditor.

Duty of Auditor.

Duty of board of public works.

Shall give drafts.

Proviso.

SEC. 24. The board of commissioners of public works shall furnish the acting commissioners on the respective lines of the public works, with the necessary funds to prosecute the works under their charge, and supervision, respectively, and for that purpose shall give drafts from time to time, on the board of fund commissioners, signed by the President, or President pro tempore, for the time being, and countersigned by the Secretary of the board, payable to the order of the said acting commissioner, and specifying on the face of said draft, the particular work to which the amount thereof is to be applied, which said drafts, when endorsed by the said acting commissioner in his official capacity, shall be paid by the board of fund commissioners, subject, however, to the provisions and restrictions contained in the fifth section of this act; and also under such other rules, regulations and restrictions, as the said board of fund commissioners may deem necessary for its security and proper application: *Provided*, That whenever it may be necessary to pay any contractor or other person, company or corporation, a large sum of money for work performed, materials furnished, lands purchased, or for other legitimate purposes, for carrying into effect the objects of this act, said payments may be made directly to such persons, companies, or corporations, by a draft drawn on the board of fund commissioners, payable to the person, company or corporation entitled to receive the same, which draft shall be signed by the President or President pro tempore, of the board of commissioners of public works, and by at least one, and by as many other commissioners as there are amounts of twenty thousand dollars, included in the amount of said draft, and shall be

countersigned by the secretary of the board, which draft shall specify the objects for which it is drawn, and to the particular work, to the account of which it is to be charged; and shall be paid by the said board of fund commissioners, on presentation to said board, under such regulations as they may establish for the payment of such special drafts; and the amounts of the last description of drafts shall not be deemed by the board of fund commissioners to be remaining in the hands of the commissioners of public works, signing the same, in contemplation of the said fifth section of this act.

SEC. 25. The board of commissioners of public works shall cause all moneys coming to their hands, or to the hands of the respective acting commissioners, to be expended in the most economical manner on the works of Internal Improvements, authorized by law, and placed under their charge and supervision, and on none others, nor for any other objects excepting such as are specified in this act; at such times and places and in such sums as they may deem most judicious and conducive to the general public good; having in view a prudential distribution of the available labor of the State, over and upon all the various works authorized to be constructed, as shall tend in as small a degree as possible to increase the prices of labor and provisions, beyond a reasonable amount, in any one section of the State; and having also in view a fair and equitable uniform progress of all of the said works, at the same period of time. And it shall be the duty of the said board of commissioners of public works, to commence the different portions of the rail roads at their intersection and connection with navigable streams, and to progress from said streams, in both directions, in order that the roads may become productive of revenue, as early as possible, *Provided*, That nothing herein contained shall be so construed, as to prevent the said commissioners from prosecuting and putting into operation any portions of the said rail roads, in the interior and remote from navigable water courses, whenever they may deem the interest of the State to demand it, and particularly in both directions from important trading towns on their routes.

Expenditures how made.

Rail roads — where to be commenced.

Proviso.

SEC. 26. The said board of commissioners of public works are hereby authorized and empowered, so soon as any portions of the said public works shall be so far completed as to be capable of use, to provide the requisite machines and motive power to put the same into operation, under such rules and regulations as the said board may think expedient to adopt; and to establish such tolls, and to adopt such measures to secure the faithful collection and payment thereof to the board of fund commissioners, as they may deem most advisable, to promote the objects intended by this act.

Board of Public works when to put works in operation.

SEC. 27. It is hereby made the express duty of the board of commissioners of public works, by one or more of its members, to proceed in early and due time, along the lines of, the several rail roads and other works herein authorized to be constructed, and take from the several individuals, companies and corporations, through whose lands the said contemplated works may probably pass, or which may be contiguous to the routes thereof, grants and releases to the State, of the necessary land, timber, stone, and

Said board to receive grants & releases of land, &c.

other materials necessary for the purpose of constructing any or all of said works, or for maintaining and repairing the same, and also for building ground for the construction of mills or other hydraulic machinery, to be propelled by the water powers created by said works; and also, for the purpose of erecting warehouses, engine houses, work shops, and other necessary buildings; and also such plats of ground as shall be deemed necessary for depots and stopping stages, at the ends and along the routes of the said rail ways; and also all such sites for dams and locks, and other works to be by them erected, under the provisions of this act; and also to enter and purchase in the name and on behalf of the State of Illinois, any lands belonging to the general government, or to individuals, companies, or corporations, which will or probably may be necessary for any of the purposes above mentioned.—Releases and conveyances shall be taken in the name of the State of Illinois, and shall operate to vest in the said State a full and complete right to enter upon, use and take the said lands, materials and privileges thereby granted, at any and all times thereafter.

To purchase and enter lands.

Releases and conveyances to be taken in name of State.

Board of Public Works to enter upon and take lands.

SEC. 28. It shall be lawful for the board of commissioners of public works, and each of the members thereof, by themselves or by any superintendent, agent or engineer, employed by them, to enter upon and take possession of, and use all and singular any lands, streams and materials of any and every description, for the location, prosecution and completion of the improvements contemplated by this act; and all plats of land as shall be necessary for the convenient and profitable use of water powers created thereby, and for the location of depots and stopping stages, at the ends and along the route of any line of rail road; and for the purpose of constructing any bridge, dam, lock, canal, side cut or other river improvement, and upon which to erect such and so many lock houses, warehouses, engine houses, work shops, and other buildings, as shall be necessary to carry into full effect the objects contemplated by this act; whenever, and in all cases, any of the aforesaid lands or privileges cannot be obtained by the voluntary grant or release of the owner or owners thereof, avoiding in all cases unnecessary damage and injury to private property.

Redress and remuneration to persons injured by taking their lands, &c.

SEC. 29. That when any person or persons, company or corporation, whose lands, waters, or materials, shall have been taken and used in the manner and for any of the purposes mentioned in the foregoing section, shall feel aggrieved by the taking and using the same, for the use of the State, by the said board of commissioners of public works, the owner or owners of said property shall have redress and remuneration for the injury or supposed injury, in the manner prescribed, and under the provisions of an act entitled "an act concerning the right of way, and for other purposes," approved February 28th 1833. *Provided*, That the justice of the peace summoning the householders to act as appraisers in the case, shall choose the said householders with a view to their capacity and integrity, and who shall not be directly or indirectly interested in the result of the decision to be made by them, and who shall in addition to the oath required to be administered to them, by the said recited act, swear or affirm that they are not interested either directly or indirectly in the lands or other property

Proviso.

in controversy, nor in any other lands, waters, or materials, likely to be required by the State, in the construction of any of the public works authorized to be constructed, and that they have not any present intention of becoming so interested; and the damages to be fixed and awarded by the said householders, shall be paid by the board of commissioners of public works, to the owner or owners of the property so taken, or to their legal representatives, which decision and payment of damages, shall operate to vest in the State of Illinois, all such lands, waters, privileges, and materials, as fully and to all intents and purposes, as if the same had been granted or released to the State by the owner or owners of said property; *Provided*, That either party may take an appeal from the said decision before the justice of the peace, to the circuit court of the judicial circuit in which the lands or other property may be situated, within such time, and in such manner and form, as near as may be, as shall be allowed by law in other cases before justices of the peace, and the said justice shall recognize any member of the board of public works, or any agent, superintendent, or engineer, employed by the said board, and who may appear in the case on the part of the State, as the party authorized to act in the case for the State, and no appeal bond shall be required to be filed, by the person so authorized to appear and act for the State, on any such appeal to be applied for by them, any law or practice to the contrary notwithstanding. And in no case shall the pendency of any petition, suit, or appeal, between the State and the said owner of property, operate to delay or hinder the progress and completion of any of the works authorized by this act.

Further proviso.

SEC. 30. That whenever any lands, waters, privileges or materials necessary to be taken and used for the construction of any of the aforesaid works, shall belong to minors, feme covert, persons who are non compos mentis, or non residents of the State, it shall and may be lawful for the board of commissioners of public works, or any member thereof to file a petition in the office of the clerk of the circuit court of the county in which said lands or other property may lie, stating all the facts in the case, as are within the knowledge of the petitioner, and describing the land, waters, privileges, and materials, which it has become necessary to take and use for the State, in the construction of any work, and the said circuit court, setting and acting as a court of chancery, shall make such orders in the case, and make and enforce the execution of such decrees in the premises as shall appear to said court, upon a full hearing of the facts of the case, to be just and equitable, being governed in its decisions by the principles for valuation laid down in the act concerning right of way, cited in the foregoing section of this act.

How Board of Public Works to proceed when lands, &c. belong to minors, feme coverts, or persons non compos mentis.

SEC. 31. The said board of commissioners of public works, are hereby authorized and required to enter and purchase for and on behalf of the State of Illinois, any lands belonging to the general government, and lying within five miles of the probable route of any of the public works, which in the opinion of any two members of the board, may be deemed valuable, and the value of which will in their opinion be materially enhanced by the construction and completion of the said works contiguous thereto; *Provi-*

Said Board required to enter lands belonging to General Government.

Proviso.

ded, That any tract of unentered land not exceeding one hundred and sixty acres, upon which an actual settler may reside, shall not be entered by the said board, unless the occupant shall consent to such entry.

Deeds, grants, &c. to be filed.

SEC. 32. All deeds, grants, releases, certificates of the entries of government lands, and other vouchers relating to lands, released, purchased, or taken for the State, shall be filed in the office of the auditor of public accounts, and shall be by him recorded in a book to be provided for that special purpose, and an alphabetical list of the said vouchers shall be kept in the said book, for the convenience of reference.

Location of rail roads to be upon most direct and eligible route.

SEC. 33. The location of all the rail roads authorized by this act, shall be made with a view of occupying the most direct and eligible route between the several points named for their commencement and termination, and between such intermediate points as are specified, adopting in all cases such plan and profile for the respective roads, as will be productive of the greatest useful effect in their operation as the nature of the country over which they pass, and an economical construction will admit of, *Provided*, That in cases where any county or other important trading town, cannot be reached with the main line of rail road, by a judicious and economical location, it shall and may be lawful for the board of commissioners of public works to construct a lateral branch of the said main line to the said town calculated for a single track only, when the distance to said town from the main line shall not exceed five miles, if in the opinion of the board the interests of the State will not be compromised or injured thereby.

Proviso.

With what view the location of Roads which intersect navigable rivers shall be made.

SEC. 34. The location of the several roads which intersect the navigable rivers, shall be made with a view of crossing the valleys thereof, without the aid of stationary power wherever practicable, and also with the further view of combining the aforesaid character of the line with that of commanding a favorable and eligible site for the construction of bridges over the said rivers, *Provided*, That the construction of bridges over the Illinois and Great Wabash rivers shall be dispensed with by the board until specially authorized by the legislature; and if it should be found impracticable to locate any rail road over the valleys of the Illinois and Wabash rivers, without resorting to inclined planes to be overcome by stationary power, the said inclined planes shall also be dispensed with by the board, and the depot made at the summit, until the action of the legislature can be had upon the subject, *Provided, also*, That if said rail roads intersecting any navigable stream shall be ready for use, before any bridge over the same shall be completed, it shall be lawful for the board to procure and keep in operation the necessary ferry boats and apparatus to transport the trade and travel across said river until the said ferry shall be superseded by the completion of the bridge over the same; and for the purpose of establishing and keeping in operation the said ferries, the board are hereby authorized and required, to procure the necessary plots of land on either side of any river, by release, purchase or otherwise, as is herein before provided for procuring lands for other purposes, to carry into effect the objects of this act.

Proviso.

SEC. 35. The road bed formation and bridges shall, in all cases

be made of sufficient width to admit of the construction of a single track rail way thereupon, and all the bridges over streams exceeding eighty feet wide from bank to bank, shall have sufficient extra width to admit of the safe passage of the common road wagons, and the embankments and excavations at the end of said bridges shall be accommodated to the passage thereof, unless, in the opinion of the board of commissioners of public works, this plan may be dispensed with in special cases without prejudice to the public good, whenever it may be inconvenient and expensive to procure suitable building stone for the construction of bridge abutments, culverts or other structures, durable and well selected timber may be substituted therefor, with the ultimate view of replacing the same with stone, to be transported on the rail ways when completed, at any time when the necessity of the case may require it.

Width of road bed formation, and bridges

SEC. 36. One track only of the said rail ways with the necessary turn-outs and side tracks at the convenient points for stopping stages and depots along the lines not less than five miles nor more than fifteen miles asunder and also at the intersection of navigable rivers, and at the commencing and terminating points of the several lines of rail roads, shall be laid down, until in the opinion of the Legislature the exigences of the trade on any route and the public good may demand the construction of the additional track.

One track only, and necessary turn-outs to be made.

SEC. 37. The tracks of all the rail ways to be constructed in this state, shall be made of one uniform width; which width shall be four feet and eight inches in the clear: *Provided*, That if any agreement or understanding shall hereafter be entered into between this and any other or all of the western states and territories, to provide for a uniform width of rail way tracks therein, the board of commissioners of public works shall conform thereto: *Provided*, The same shall not be less than four feet and six inches.

Width of track. Proviso.

Further proviso.

SEC. 38. The superstructures of all the rail ways to be laid down on all the roads authorized by this act, shall be laid upon a wooden or stone foundation, or both, as may be most convenient and economical; and shall be made of hard and durable timber, or with stone and timber combined, where stone of a suitable quality can be found convenient to the line, as in the judgment of the board of public works, is most economical and expedient, and the rails shall be plated with iron, not less than five eighths of an inch in thickness, (excepting lateral branches,) before cars shall be permitted to run upon the rail ways; and the whole of the main lines shall be of sufficient strength and solidity to admit of the successful application of steam power upon the said rail ways.

Superstructure of rail-ways.

SEC. 39. The board of commissioners of public works shall adopt such plans and elevations for all bridges over navigable streams, as shall not obstruct the ordinary navigation thereof; and shall construct and provide safe, convenient and suitable crossings over all rail roads, for all public roads and highways laid out prior to the location of the said rail roads, which shall intersect the said rail roads. *Provided*, That they shall have power to change the specific location of any such road or highway, in that part thereof contiguous to the route of said rail road, in order to command the most eligible and economical site for making said crossing; and, *Provided, also*, That such change of location shall not materially

Further duties of Board of Public Works concerning bridges, &c.

Proviso.

Further proviso.

increase the length of said travelled road or highway, or prejudice the usefulness thereof; and shall also construct and provide crossings for private roads and farmways, at such suitable and convenient points as will be least expensive to the State, and least injurious to the rail way, and at the same time accommodate as generally as practicable, the neighborhood or individuals intended to be accommodated thereby. In order to provide against the expense and injury arising from an unnecessary number of road crossings over rail roads, all public and private roads to be laid out, after the location of any rail road route, and which shall intersect the same, shall, whenever the public interests will not be essentially prejudiced thereby, be located and directed to some former established crossing, or to some regular stopping stage and depot on the line of the rail road.

Persons injuring works. How liable.

SEC. 40. That if any person shall wilfully, wittingly, and maliciously, or negligently, obstruct any rail road in this State, by throwing or placing upon the track of any said rail road, any material or thing calculated to injure any engine, car, or vehicle, running thereon or to throw the same from the track of said rail road or shall otherwise obstruct or injure any rail road or any engine, viaduct, car, bridge or other appendage thereof, in any manner whatsoever, or shall ride, drive or lead, any beast, wagon, or other vehicle across any rail road, excepting upon the road crossings provided for that purpose, every person so offending shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one thousand dollars, or imprisoned any term not exceeding five years or both at the discretion of the court before whom the conviction may be had.

Bells to be attached to engines.

SEC. 41. Every locomotive engine, passing upon any rail road, shall have attached to the same a bell of not less than twenty-five pounds weight, and the said bell shall always be rung at the distance of at least sixty rods from the place where said rail road crosses any other rail road, turnpike road, highway or public road, upon the same level with the said rail road, and shall be kept ringing until the engine and its train shall have crossed the said road or way.

Boards with inscriptions.

SEC. 42. There shall be boards conspicuously put up, and constantly maintained, across each turnpike road and highway, crossing any rail roads upon the same level therewith, in such a position as can be easily seen by travellers, and without obstructing the travel; and on each side of the said boards shall be printed in plain and legible capital letters, of at least the size of nine inches each;—
RAIL ROAD CROSSING; LOOK OUT FOR THE ENGINE WHILE THE BELL RINGS.

Board of Public Works empowered to adopt and enforce rules and regulations

SEC. 43. The board of commissioners of public works are hereby authorized and empowered to adopt and enforce, from time to time, all such rules and regulations as they may deem necessary and expedient, for the purpose of carrying into full effect the objects of this act, and to provide for the security and successful management and operation of the public works authorized hereby; and in the absence of legislative enactments, to fix and establish the rates of toll to be collected thereupon, and provide for the faithful collection thereof, and for the payment of the amounts col-

lected to the Board of Fund Commissioners; which rules and regulations, and rates of tolls, shall be published, and printed copies thereof kept up, publicly exhibited along the several lines of the public works, wherever their observance is required; and any person knowingly, wilfully, and maliciously offending against the said rules and regulations, or refusing or evading to pay the established tolls, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned by the court before whom the conviction may be had: *Provided*, that the fine shall not exceed fifty dollars, and the imprisonment six months, unless the offence shall be deemed by the court to come within the purview of the fortieth section of this act, when the penalties therein prescribed may be inflicted by the court: *And provided also*, that no conviction under this act shall be deemed to exempt the offender from the payment of all damages which may have accrued to the public and private property, in consequence of the commission of any such offences.

Proviso.

Further Proviso.

SEC. 44. For the purpose of guarding against accidents and for the greater security of lives and property on rail roads in this State, no person shall be employed in the situation and capacity of engineer and conductor of locomotive engines, or of superintendent of the transportation thereon, who is habitually intemperate.

Intemperate engineers not to be employed

SEC. 45. It shall be lawful for any individual, company or corporation, to connect any branch or other rail road with the roads hereby authorized to be constructed, at such points, and upon such reasonable conditions, to protect the rights of the State, as the board of commissioners of public works may deem to be just and right: *Provided*, That the tracks of all such branch or other rail ways, shall be of the precise width of the rail ways of the State; and the construction of the wheels of the cars in use on said branch or other rail ways, and designed to pass off upon the State rail roads and run thereon, shall be of such a model as shall not materially injure the State rail roads; and *provided also*, that the engines, cars, and coaches, passing from the said lateral to the State rail roads, shall be subject to and conducted while on the said State rail roads, by the rules and regulations adopted by the board for that purpose.

Other works may be connected with State works

Proviso.

Further Proviso.

SEC. 46. Whenever in the opinion of the board of commissioners of public works there shall or may be surplus water, over and above the quantity required for navigation at any dam, lock or other work constructed at the expense of this State, either in whole or in part, the said board are hereby authorized and empowered to lease the water power, produced by said surplus water, together with the necessary plats of grounds upon which to erect hydraulic machinery, to be propelled thereby, to the highest bidder therefor, under such conditions and restrictions as a majority of a full board of commissioners may deem necessary and proper for the interests of the State; but no water power shall be leased by the board unless the ground upon which the same is proposed to be used, shall be the property of the State, unless otherwise specially provided for by the Legislature.

Board of Public Works may lease water power.

SEC. 47. For the purpose of securing the confidence of the

Officers not to purchase lands. people in the honesty and integrity of the officers and engineers concerned in the public works, and to protect said officers and engineers from imputations of malfeasance in the discharge of their respective duties, it shall not be lawful for either member of the board of public works, or for any engineer concerned in the recognition, examination or location of any of the public works authorized by this act, or hereafter to be authorized by law, after the date of their election or appointment, to purchase, or in any wise become interested, either directly or indirectly, in any lands, tenements, or real estate, lying within five miles of the routes or probable routes of any of the rail roads authorized by this act, or within one mile of the proposed location of any dams, or locks, by which water power will be created, until the permanent location of any such works, shall have been definitely fixed and established by the board of public works, and the said established location shall have been marked out on the ground and made fully public; nor shall any contingent contract, bargain or understanding be made in the premises, for any such lands or real estate by which the provisions and prohibitions contained in this section may be evaded, or intended to be evaded, by any such commissioner or engineer. And it shall be the express duty of the said commissioners and engineers, (to the observance and discharge of which each engineer shall be sworn or affirmed before entering into the discharge of any of the duties of his appointment,) to keep secret, for the interests and advantage of the State, all information which he or they may become possessed of in the discharge of their respective duties, relating to all lands which may be necessary and useful for the State to become possessed of; either by entry or purchase, for the use of the works, or otherwise to aid in their construction, and to enter and purchase the same for the State, under the authority of this act, or any subsequent act or resolution of the general assembly authorizing the same; or to give the necessary notice to the board of public works or to some member thereof, that the said lands may be so entered or purchased; and shall not, either directly or indirectly, give any such information to any other person or persons whatsoever: And if any member of the board of commissioners of public works, or engineer, shall be guilty of a violation of any of the provisions of this section of this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding five thousand dollars; one half to be paid to the person who may inform thereof and prosecute to conviction, and the other half to be paid to the fund for internal improvements; and said conviction shall amount to a removal from his office or appointment as the case may be, and the offender shall forever thereafter be incapable of holding any office or appointment in this State: *Provided*, That nothing herein contained shall be so construed as to prevent any commissioner or engineer, from purchasing or leasing for a term of years a residence along any of the lines of the public works on which they are engaged, if the same be done in good faith, for the purpose of a residence alone, and not with any intention of evading the provisions of this section;—nor shall it be so construed as to

Commissioners and engineers to keep certain things secret.

Proviso.

prevent purchasers of town property in any town, to which the respective rail routes are permanently fixed by law, and the location of which said road at said point, is in nowise left to the discretion of the board of commissioners of public works; *And, provided*, That such purchases of town property shall not be situated on the immediate line of the said rail road.

Further proviso.

SEC. 48. The said board of commissioners of public works or any member thereof, are hereby authorized, and required to prosecute and defend all suits for damages done to the public works, or trespass on the lands of the State, entered or purchased, or otherwise acquired for the use of said works, or in aid of their construction for the use of the State, in any court of record having cognizance thereof; and to proceed in all matters and things as an individual might do; and such damages, when collected, shall be paid over to the board of fund commissioners; and all acts in force in this State, in relation to trespass upon lands, by cutting timber or otherwise, shall be deemed to extend to trespasses committed upon State property.

Board of Public Works to prosecute and defend suits.

SEC. 49. Nothing in this act contained, shall be construed to extend to the Illinois and Michigan canal, or to any operation thereon, or to the funds relating thereto, or to the canal lands granted by Congress to aid in the construction thereof.

This act not to extend to Illinois and Michigan canal.

SEC. 50. The board of commissioners of public works shall suspend their operations on the several rail roads named in this act, for which companies have heretofore been incorporated to construct, until said companies or corporations shall have relinquished and released to the State their right to construct the said rail roads or parts of roads aforesaid, respectively, by releases signed and sealed by a majority of the board of directors, (if the companies have been organized and directors elected) which releases shall and may contain a proviso and reservation for the benefit of the said companies; that the State shall, and will commence, construct and complete the said rail roads, named and designated in this act, and for which the said releases are given, respectively, within the time, and as is provided for in the first clause of the eighteenth section of this act: *Provided*, That said releases shall be given by the said companies or corporations, and filed in the office of the Secretary of State, within a reasonable time, and without unnecessary delay; and *provided, also*, That nothing contained in this section shall be so construed as to prevent, excuse, or delay the board of commissioners of public works, or other authorized agent or agents on the part of the State, from entering or purchasing lands along or contiguous to any of the routes or probable routes of any of the said rail roads for the use of the State, by virtue of this act, or any other act or resolution of the General Assembly prior to the making and filing of any such releases; but shall be construed to extend only to commencing the survey and construction of the said several rail roads, for which releases have not been executed and filed as aforesaid.

Further duties of Board of Public Works.

Proviso.

Further proviso.

SEC. 51. That whenever the proprietor of any town plat or the corporation of any town or borough, through which any of the rail roads, authorized by this act, are to pass, shall object to the passage thereof, or the said proprietors, corporations, or owners of prop-

How Board to proceed when unreasonable damages

are demanded for right of way.

erty shall require and exact from the State unreasonable damages for the right of way, through the said town plat, it shall be lawful for the board of commissioners of public works, to locate the said road, in the vicinity thereof, in such manner as will best promote the interest of the State.

When surveys to be made.

SEC. 52. That so soon as there shall be appointed a board of commissioners of public works under the provisions of this act, said board of commissioners shall proceed to survey and locate all rail roads contemplated in said act, so soon as they can possibly perform the same; and so soon as said road or roads are located it shall be their duty to advertise the same in some one or more newspapers printed in this State, as said commissioners shall think best, for contracting with any person or persons, company or companies, for the contracting and completing of a part or of all of said rail road, to be done on the plan laid down by said board of commissioners.

Further duty of Board of Public Works, as to roads between Quincy and Wabash.

SEC. 53. That it shall also be the duty of the board of commissioners to contract for the immediate construction, so soon as located, of all the rail roads or parts thereof contemplated between Quincy and the Wabash, as lies between Jacksonville in Morgan county, Springfield in Sangamon county, Decatur in Macon county, and Danville in Vermilion county; thence to the state line in Vermilion county in a direction to Lafayette in Indiana, at such point as the commissioners of this state and of Indiana may agree to cross the same.

Provisions for companies contracting for the construction of roads.

SEC. 54. That any company or companies, contracting for the construction of all or a part of said rail road and furnishing money for the completion of the same; (provided the amount so appropriated does not exceed the amount agreed upon by said contracting parties for the completion of said rail roads,) and whenever said rail road or roads, shall be completed by said company or companies, then it shall be the duty of said commissioners, and they are hereby required to report the same to the fund commissioners, whose duty it shall be to draw a warrant or warrants in favor of the company or companies for the same together with six per cent. interest from the time they commenced said work, provided they on their part suffered no unnecessary delay.

When rail road completed it shall be a public road. Proviso.

SEC. 55. Whenever said rail road is completed according to the provisions of this act and the same paid for, then it shall be a public road, and be managed and kept in repair as all other public state rail roads are kept: *Provided*, That the money to be paid as aforesaid shall be paid out of the fund appropriated for the construction of said road, and no other; and *Provided further*, That all parts of said road may be put under contract, and completed upon the terms provided in the foregoing sections.

This a public act.

SEC. 56. This act shall be deemed and taken to be a public act, and shall be taken notice of as such, without the necessity of pleading the same; and shall be in force from and after its passage.

APPROVED, Feb. 27, 1837.

AN ACT supplemental to the "act to establish and maintain a general system of Internal Improvements." *In force March 4, 1837.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the board of fund commissioners, created by the act to which this is a supplement, shall take and use all proper means and measures for the transferring the stock authorized to be constituted by said act, and also for the transferring all state bonds authorized to be made and executed under the provisions of this act, and it shall be deemed a good execution of the power to borrow, to cause the said certificates of stock and state bonds to be sold; provided that said stock and bonds shall not, in any event be sold for less than par value.

SEC. 2. The Governor of the State is authorized and required, whenever requested by the said fund commissioners, to execute bonds for and in behalf of the State, for any sum or sums of money which may be borrowed, under the provisions of this and the act to which this is a supplement, in any foreign language, stipulating for the payment of the interest and principal, in such foreign currency and country as shall be found most beneficial for the interest of the State; which bonds shall be signed by the Governor, countersigned by the Auditor of public accounts with the impress of the great seal of state affixed thereto, and shall be delivered to the fund commissioners.

SEC. 3. The fund commissioners are authorized to appoint one or more agents, with full power to negotiate the loans, and make sale of the state bonds and certificates of stock in any foreign country, and to vest the said agent or agents with as full and ample powers are by law vested in the said fund commissioners.

SEC. 4. The State hereby engages and agrees to provide sufficient revenues and means to pay the interest and principal of all sums of money, which under the provisions of the act to which this is a supplement, may be borrowed as the same becomes due and payable, and the faith of the State is hereby irrevocably pledged to comply with the provisions of this section.

APPROVED, March 4, 1837.

AN ACT further supplemental to an "act to establish and maintain a general system of Internal Improvements." *In force March 4, 1837.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That so much of the act, to which this is an amendment, as authorises three of the board of commissioners of public works to form a quorum of said board to do business, be and the same is hereby repealed, and hereafter no less than four shall be requisite to constitute a quorum.

SEC. 2. The fund commissioners elected under the provisions

Term of office of fund commissioners. *Commissioners to be paid only for time actually employed.*

of the act to which this is a supplement, shall hold their offices for two years, and until their successors are elected and qualified.

SEC. 3. Nothing in the act to which this is a supplement, shall be so construed as to entitle the fund commissioner or commissioners of public works, to receive their per diem compensation, excepting for the time actually and bona fide engaged in the discharge of their respective duties.

APPROVED, 4th March, 1837.

In force 21st July, 1837.

AN ACT further supplemental to an act to establish and maintain a General System of Internal Improvement.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the commissioners of public works be and they are hereby authorized and required, as soon as practicable, to proceed to the survey, location and construction of the several routes of rail road, and other public improvements, indicated by the act to which this is a supplement, any thing in the fifteenth section of said act to the contrary notwithstanding.

APPROVED, July 21st, 1837.

INCORPORATIONS.

In force January 31, 1823.

AN ACT to incorporate such persons as may associate for the purpose of procuring and erecting public Libraries in this State.

WHEREAS, a disposition for improvement in useful knowledge has manifested itself in various parts of this state, by associating for procuring and erecting public libraries; and whereas, it is of the utmost importance to the public that the sources of information should be multiplied, and institutions for that purpose encouraged and promoted:

Ten persons may erect a public library, if one hundred dollars be subscribed. *Directors may be elected.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That from and after the passing of this act, it shall be lawful for any number of persons, not less than ten, in any part of this state, who shall subscribe in the whole not less than one hundred dollars, to assemble on the second Tuesday of any month in which they shall determine to meet, at a place previously agreed on by a majority of the subscribers, to elect and appoint not less than three, nor more than seven of their number as trustees, to take charge of the moneys belonging to the corporation thereby erected, and to transact all affairs relative to the same.

Manner of electing officers.

SEC. 2. *Be it further enacted,* That the said election to be held as aforesaid, shall be conducted in the following manner, to wit: that whenever two-thirds of the subscribers shall assemble at the time and place previously agreed on, they shall proceed to choose a chairman from among themselves, who shall preside at such election, receive the votes of the subscribers, and be the officer to return the name of those who, by plurality of voices, shall be elected trustees of said corporation; that the said returning officer shall certify, under his hand, the names of the persons elected trustees for said library, in which certificate the name and style of the corporation shall be particularly described; which certificate shall be filed in the office of the clerk of the county commissioners' court, and at the next term of said court after such filing, the clerk thereof shall copy the same upon the records of the proceedings of the said court; for doing which he shall receive a fee of fifty cents and no more.

Certificate of election to be recorded in the county courts.

Persons so elected, made a corporate body.

SEC. 3. *Be it further enacted,* That the persons so elected shall be trustees for said library, and that the said trustees and their associates, and such other persons as shall, from time to time, become members of such corporation, shall be one body, corporate and politic, in fact and in name, by the name, style, or title mentioned in said certificate, so to be filed and entered on record as aforesaid, and by that name shall have succession, and they and their successors shall be capable in law to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law or equity whatsoever; and they and their successors shall have a common seal, and may alter and change the same at their discretion: and also, that the said trustees and their successors, by the name and style described in said certificate, shall be capable in law of purchasing, holding, and conveying any estate, real or personal, for the use of said corporation: *Provided,* such real and personal estate, so held, shall not at any one time exceed the annual value of six hundred dollars, exclusive of the books and the annual payments which shall be made by the members of the said corporation.

May sue and be sued.

Estates held by them not to exceed \$600.

SEC. 4. *Be it further enacted,* That hereafter there shall not be less than three, nor more than seven trustees for every library so incorporated as aforesaid, who shall hold their offices one year, and until others be elected in their places, and shall manage the business of the said corporation; and that there shall be one chairman of said trustees, one treasurer, and one librarian: and that it shall be lawful for the said trustees, whenever they conceive it necessary, to appoint one and the same person treasurer and librarian.

Number of trustees to each library, and one chairman, one librarian, and one treasurer.

SEC. 5. *Be it further enacted,* That the offices of the said first trustees shall determine on the following year, on the second Tuesday in the same month in which they were chosen, and that on the first Tuesday in the same month in which the election was held in every year forever thereafter, there shall be a general meeting of the members of the corporation at some convenient place, to be from time to time ascertained and fixed by the by-laws of the said corporation, and that then and there, by a plurality of votes of such members as shall so meet, not less than three, nor more than seven trustees shall be elected to serve the ensuing year; and that any

Officers to be elected annually, and the manner of electing them.

A vote allowed for each right.

person holding more than one right in said library, shall be entitled to one vote for each right he or she shall hold in the same ; that the trustees of said library shall, annually, at their first meeting on or after the day that their offices commence, appoint one of the said trustees their chairman ; that in case of the death, removal, refusal or neglect to serve, of the chairman for the time being, it shall be lawful for the trustees of the said library, at any of their meetings, to appoint another chairman instead of the one dying, removing, refusing, or neglecting to serve as aforesaid, to remain in office till the expiration of the time during which his predecessor was entitled to serve ; and when any vacancy shall happen by the death, removal, resignation, or neglect to serve of any of the said trustees, it shall be lawful for the chairman of the said trustees, or on his neglect or refusal, for any other two of the said trustees, to summon a meeting of the members of said corporation at a place fixed by the by-laws of said corporation, for the purpose of electing other person or persons instead of such as shall have so died, removed, refused or neglected to serve as aforesaid ; and that such person or persons so to be chosen trustee or trustees, at such meeting as last aforesaid, shall respectively remain in office during such time as the person in whose stead such trustee shall be chosen, would have done in case such death, removal, or refusal had not happened, and no longer ; and that the trustees of the said library, shall, at every such annual meeting of the members of the said corporation, exhibit to the members a state of the said library, the minutes of the proceedings of the trustees during the year immediately preceding, with the treasurer and librarian's accounts, stating the amount of the receipts and expenditures during such year.

Officers dying, removing, and refusing to serve: how the vacancy is to be filled

Condition of the library with treasurer and librarian. accounts to be made at all annual meetings.

Time of meeting.

Two trustees may call a meeting by giving 2 days notice.

How a board of trustees may be formed.

May adjourn from time to time.

Librarians & treasurers may be removed.

Trustees to compensate librarian and treasurer, and to direct the application of their funds.

SEC. 6. *Be it further enacted,* That said trustees shall have stated meetings in every quarter in every year, at such time and place as shall, from time to time, be appointed for that purpose ; that the chairman, or any two trustees of said library, for the time being, may, from time to time, as occasion requires, call together, at such place as shall from time to time be appointed by the by-laws, of said corporation, the trustees of said library, giving them at least two days previous notice of such meeting ; that the chairman and a majority of the said trustees shall form a board of trustees, and that in the absence of the chairman, the trustees so met shall choose another to serve on that occasion ; that the chairman shall have a casting vote and no other ; that the chairman, and a majority of the trustees so met, shall have authority to adjourn from time to time, as the business of said corporation may require ; and from time to time to appoint at their pleasure, to displace a treasurer or librarian of the said library, and to appoint other or others in their stead ; to ascertain the compensation to be allowed to the treasurer or librarian, or either of them, for their service in their stations respectively, and to appoint to them their respective powers, trusts, and duties ; to direct the application of moneys belonging to the said corporation, to the purchase of such books and apparatus as they shall think proper ; to the providing a room or house for the safe keeping of the books of the said library ; and to do in the name of the said corporation, all and every act

and acts, thing and things whatsoever, which shall be necessary to be done, and which the trustees of the said library, are by this law, authorized to do ; and to make at all times hereafter, such laws and regulations for the government of the officers and members of said corporation for regulating the terms upon which the books of the said library shall be lent out, both to the members of said corporation, or to others ; for fixing and ascertaining the times and places in the quarterly meetings of the said trustees ; for allowing and fixing the places of meeting of the members of said corporation, for the election of trustees, for regulating the management and disposition of the books of the said library, and the moneys, funds, and effects belonging to the said corporation, the mode of transferring rights in the said library from one person to another, and all the other business of the said corporation, as they, or the major part of them, so legally met, shall judge best for the general good of said corporation ; and for the more effectual promoting, increasing, and preserving the said library, and the same or any of them to alter or repeal from time to time, as they or a major part of them, so met, shall think proper : *Provided,* such laws and regulations shall not be repugnant to the laws of this state.

To make by-laws.

Mode of transferring right in libraries.

SEC. 7. *Be it further enacted,* That it shall be lawful for each and every of the members for the time being of the said corporation, his or her executors, administrators, and assigns, to give, sell, devise, and dispose of their respective rights in the said library, and that their respective assignees shall be members of said corporation, and shall be entitled to all the same rights and privileges in said corporation as the original members are entitled to by this act : *Provided,* that a part of a right in said library shall not entitle the proprietor or owner thereof, to any privilege whatever in said library or corporation.

Purchasers of the rights in libraries entitled to all the benefits of the first owner.

SEC. 8. *Be it further enacted,* That it shall be lawful at such meeting of a majority of said trustees of the library for the time being, to make any by-laws, constitutions, or ordinances of the said corporation, to admit under the common seal of the said corporation, such and so many persons, members of said corporation, as they shall think beneficial to said library ; which members so admitted, shall be entitled to have, hold, and enjoy, all and every the same rights and privileges as the original members are entitled to by this act.

New members to be entitled to the same benefits and privileges of the old ones.

SEC. 9. *Be it further enacted,* That each member of the said corporation for the time being, shall, on or before the first Tuesday in the month fixed for the election of trustees, annually pay to the treasurer of said library for the use of said corporation, the sum or sums which shall be fixed by the by-laws of said corporation ; and that whenever any of the members of the said corporation shall neglect to pay the said annual sum, or any other sum which shall of right become due to the corporation, for the space of fifty days, next after the day on which the same ought to have been paid, that, then the person, or persons from whom the same shall be due, shall be precluded from exercising any of the privileges to which he became entitled by virtue of his being or becoming a member of the said corporation, until such sums shall be fully satisfied ; and if such sums shall not be paid within two years after any

Annual contribution.

Members failing to pay their annual dues, forfeit all their privileges, and if not paid in 2 years, forfeit their rights in said library.

such sums shall become due as aforesaid, that then, and after the expiration of two years from the time such payment shall become due, the person or persons from whom the same shall become due, shall thereupon forfeit and be utterly excluded from all his, her, or their rights and privileges in the said library and incorporation.

Members failing to elect their officers regularly annually may elect at any other time.

May not transact any business except what pertains to the library.

SEC. 10. *Be it further enacted,* That in case it should happen, that an election of trustees should not be made on any day, when pursuant to this act, it ought to have been made, the said corporation shall not for that cause be deemed to be dissolved, but that it shall be lawful on any other day, to hold and make an election of trustees, in such manner as shall have been regulated by the laws and ordinances of the said corporation: *Provided, always,* That nothing in this act shall be so construed as to authorize any person or persons whatsoever, under color of any incorporation authorized by this act, to do or transact any business, matter, or thing, save what appertain to a library, according to the true intent and meaning of this act.

In force Jan. 31, 1835.

AN ACT supplemental to an act to Incorporate such persons as may associate for the purposes of procuring and erecting Public Libraries in this State, approved January 31, 1833.

Debating societies may become incorporated.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That from and after the passage of this act, it shall be lawful for any number of persons, not less than ten, in any part of this State, who shall associate themselves together, and form a constitution and by-laws for the regulation of such society, for the purpose of debating or other literary pursuits, to apply, and obtain from under the seal of the county commissioners' court of the proper county, a certificate of incorporation, agreeable to the provisions of the second section of the act to which this is a supplement, and when so incorporated, they and their successors shall have all the rights and privileges of any incorporation formed under the provisions of the above recited act.

May form their own constitutions and by-laws.

SEC. 2. All and every debating or literary society, formed and incorporated under the provisions of this act, shall, and may form their own constitution and by-laws, and may regulate their own mode of proceedings, without appointing trustees or any other officers, than such as they may think proper; but none of the by-laws formed by any such society, shall be contrary to any law of this State, or of the United States.

APPROVED, Jan. 31, 1835.

AN ACT to incorporate the inhabitants of such towns as may wish to be incorporated.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That whenever the white males over the age of twenty-one years, being residents of any town in this state, containing not less than one hundred and fifty inhabitants, shall wish to become incorporated for the better regulation of their internal police, it shall be lawful for the said residents, who may have resided six months therein, or who shall be the owner of any freehold property therein, to assemble themselves together, in public meeting, at the court house or other place in said town, and when so assembled, they may proceed to choose a president and clerk of the meeting from among their number, both of whom shall be sworn, or affirmed, by any person authorized to administer oaths, faithfully to discharge the trust reposed in them as president and clerk of said meeting: *Provided, however,* That at least ten days notice of the time and place of holding such meeting shall have been previously given by advertising in some newspaper of the town, or by setting up written notices, in at least three of the most public places in such town. *Notice.*

Town meetings how to be held.

SEC. 2 The residents, as aforesaid, of any town having assembled as directed in the first section of this act, may proceed to decide by vote, *viva voce*, whether they will be incorporated or not, and the president or clerk, after their votes are given in, shall certify under their hands, the number of votes in favor of being incorporated, and the number against being incorporated; and if it shall appear that two-thirds of the votes present, are in favor of being incorporated, the president and clerk shall deliver a certificate of the state of the polls to the board of trustees, to be elected as hereinafter provided. *How to vote.*

President and clerk to certify.

SEC. 3. Whenever the qualified voters, under this act, of any town, shall have decided in the manner herein provided, that they wish to be incorporated, it shall be the duty of the clerk of the meeting, at which they may so decide, to give at least five days previous public notice to the said voters, to assemble at the court house, or some other public place in such town, on a day to be named in such notice, to elect by *viva voce* vote, five residents and freeholders of such town, for trustees of the same, who shall hold their office for one year, and until other trustees are chosen and qualified; at which first election, the president and clerk of the first meeting shall preside, or in case of the absence of either of them, some suitable person shall be appointed by the electors present to fill such vacancy or vacancies. And at every succeeding election for president and trustees, the preceding board of trustees shall direct the manner in which the same shall be conducted. *Election for trustees.*

SEC. 4. The board of trustees of any town elected agreeably to the provisions of this act, shall choose a president out of their own body, and the president and trustees aforesaid, and their successors in office, shall thenceforth be considered in law and equity, a body corporate and politic, by the name and style of "the presi- *Trustees how organized.*

dent and trustees of the town of _____," and by such name and style shall be forever able and capable in law and equity to sue and be sued, to plead and be impleaded, to answer and be answered unto, defend and be defended in all manner of suits, actions, plaints, pleas, causes, matters, and demands, of whatever kind or nature they may be, in as full and effectual a manner, as any person or persons, bodies corporate or politic can, or may do, and may have a common seal, and may alter the same at pleasure. The said president and trustees shall require their clerk to keep a fair journal and record of all their proceedings, and record all by-laws and ordinances which they may make, in a book to be provided for that purpose.

Their powers.

SEC. 5. The president and trustees, or a majority of them, of any town incorporated as herein directed, shall have power to make, ordain, and establish and execute such ordinances in writing, not inconsistent with the laws, or the constitution of this state, as they shall deem necessary to prevent and remove nuisances, to restrain and prohibit gambling, or other disorderly conduct, and to prevent the running of, and indecent exhibitions of horses, within the bounds of such town; to provide for licensing public shows; to regulate and establish markets; to sink and keep in repair public wells; to keep open and in repair the streets and alleys of such town, by making pavements, or side-walks as to them may seem needful: *Provided, always,* that the lot in front of which any side-walk is made, shall be taxed to pay at least one half of the expenses of making such side-walk. The said president and trustees shall also have power to provide such means as they may deem necessary to protect such town from injuries by fires. And for the purpose of carrying the aforesaid powers into effect, the said president and trustees shall have power to define the boundaries of such town: *Provided,* that the same shall not exceed one mile square, and to levy and collect annually a tax, on all the real estate in such town, not exceeding fifty cents on every hundred dollars, of assessment valuation thereof.

Their duties.

SEC. 6. It shall be the duty of the said president and trustees, to cause all the streets and alleys of such town, and all the public roads passing from and through such town, for one mile from the centre thereof, to be kept in good repair; and to this end they are authorized to require every male resident of such town, over the age of twenty-one years, to labor in said streets, alleys, and roads, at least three days in each and every year; and if such labor shall be insufficient, to appropriate so much of the tax levied on real estate, as may be necessary to keep the said streets, alleys, and roads in repair, and also to appoint and prescribe the duty of all such officers, for such town, as they may deem necessary to carry into effect the foregoing powers; the collectors of the corporation tax, and the treasurer, shall severally give bond, made payable to the president and trustees, and their successors in office, with good and sufficient securities, in such sum as may by said president and trustees be deemed advisable. And a clause shall be inserted, that if at any time additional security be required, the same shall be given: the conditions of which bonds shall be, that the officer shall faithfully perform the duties of his office; and said officers

shall remain in the office one year, (unless sooner removed,) and until others shall be appointed, and shall have given bonds.

SEC. 7. The said president and trustees, elected under this act, shall continue in office for one year, and until their successors shall be elected and qualified. And it shall be their duty, before their time expires, to give at least ten days public notice to the qualified voters, under this act, to meet at such place as they may name, in such town, and elect a new board of president and trustees, for such town; and all vacancies, which may happen in said board by resignation, or otherwise, before their term of office expires, shall be filled by the other members of the board. The proceedings of said board shall always be public; and all their ordinances, before taking effect, shall be published for at least ten days, in a newspaper of such town, or by setting up copies of the same, in three of the most public places in such town. A majority of said board shall constitute a quorum.

Term of service.

SEC. 8. All moneys arising from the collection of taxes, fines, penalties, and forfeitures, shall be appropriated by said president and trustees towards the erecting, improving, and regulating those objects which, by this, are placed under their control and jurisdiction, and to none others. And it shall be their duty to have an account current of the fiscal concerns of the corporation so kept, as will at all times, shew the true situation of the same to such as may desire to inspect the same; and the said president and trustees shall have full power to enforce their ordinances, by authorizing the person or persons by them appointed to collect any tax imposed in pursuance of this act, to collect the same by distress and sale of goods and chattels of the person chargeable with the same, on giving at least thirty days public notice of the time and place of such sale; and, if no goods and chattels of the person chargeable with said tax, can be found, it shall be lawful to sell any town lot, owned by such person, or, so much thereof as will pay the tax due and in arrear from any such person, upon giving at least thirty days notice of the time and place of making such sale, paying to the owner, or owners, the overplus, if any. The president and trustees may impose fines for the breach of their ordinances; but no fine shall be inflicted on any one person, for any one breach of any ordinance, of more than five dollars, which fine may be recovered before any justice of the peace, by action of debt, in the name of the president and trustees of such town, and collected by execution, as other judgments of justices of the peace. All fines collected in pursuance of this act, shall, by the officer collecting the same, be paid over to the treasury of the corporation; and, for an omission to do so, such officer may be proceeded against by the president and trustees, in an action of debt for the same.

Moneys how expended.

Accounts to be kept.

May impose fines.

SEC. 9. Two thirds of the qualified voters of any town, incorporated according to the provisions of this act, shall have power to dissolve the same at any annual election for president and trustees, by voting against the incorporation, as is directed in the second section of this act.

Corporation may be dissolved.

SEC. 10. Whenever a president and trustees shall be elected for any town as herein directed, it shall be the duty of the president

Polle to be delivered to trustees.

dent and clerk of the first meeting, provided for in the first section of this act, to deliver to them a certified statement in writing, of the polls at said first meeting; and it shall be the duty of such president and trustees, to deposit the same with the clerk of the county commissioners' court, of the proper county, to be entered on record in his office; and before entering upon their duty, to take an oath to discharge this duty according to their best abilities.

Certain laws repealed.

SEC. 11. Whenever any town shall be incorporated by this act, all other laws incorporating the same, or made to regulate in any way, the internal police of such town, shall be considered as repealed. The inhabitants of any town incorporated by this act, shall not be required to work upon any road, except as herein required. And whenever any town corporation shall be dissolved, according to this act, all persons having any funds belonging to such corporation, in their hands, shall pay the same into the county treasury; and all bonds and securities taken for the same by such corporation, shall vest in the county commissioners for the use of such county, who may have and maintain any proceedings thereon in law or equity, which might have been had by the said corporation.

Not work on public road.

When dissolved co'y to have funds.

SEC. 12. This act shall be considered a public act, and shall be in force from and after the first day of March next.

APPROVED, Feb. 12, 1831.

In force January 31 1835.

AN ACT further defining the Powers and Duties of Trustees of Incorporated Towns.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the president and trustees of towns which have or may become incorporated, in conformity with the provisions of the act entitled "An act to incorporate the inhabitants of such towns as may wish to be incorporated," approved, 12th of February, 1831, are hereby vested with power to appoint a town constable, and authorize him to execute all writs, process and precepts which may be issued against persons for the violation of the laws of the corporation, and to arrest, on view, all persons who may violate such laws, and to collect all fines, forfeitures, and penalties which may be assessed or recovered for the use of the corporation, and to require bond and security of said constable in such sum as they may think proper. The said president and trustees are also vested with power to declare what shall be considered a nuisance within the limits of the corporation, and to provide for the abatement or removal thereof; also, to regulate the speed which horses and other animals may be rode or driven within the limits of the corporation; to provide for the trial and punishment of persons who may be engaged in assaults, assaults and batteries, and affrays within the limits of the corporation, and to provide that such punishment may be inflicted for any offence*

President and trustees may appoint town constable.

His duty.

Shall give bond.

Further powers vested in president and trustees.

Punishment of offenders.

against the laws of the corporation, as is or may be provided by law for like offences against the laws of the State: *Provided, That* no person shall be deprived of the right of trial by jury in any case, when such person would be entitled to a trial by a jury for a like offence against the law of the State. *Proviso.*

SEC. 2. The president and trustees as aforesaid, are further authorized to provide for the punishment of offenders by imprisonment in the county jails, in all cases where such offenders shall fail or refuse to pay fines which may be assessed, or for forfeitures or penalties which may be recovered: *Provided, That* no person shall be imprisoned under the provisions of this section, for a longer period than twelve hours for every five dollars of any fine assessed, or forfeiture or penalty recovered. *Punishment by imprisonment.*

SEC. 3. The said president and trustees are also authorized to adopt such laws for the security of wagons and other carriages which may be used within the limits of the corporation, and for the protection of the inhabitants against injury by reason of horses or other animals fastened to such wagons or carriages running with the same, as they may deem necessary; also, to provide for the punishment of persons who may at any time, disturb the peace of the inhabitants of the town, or the deliberations or proceedings of any public meeting of such inhabitants. *Powers conferred in trustees.*

SEC. 4. The said president and trustees shall also have power to regulate the fees and compensation of all officers of the corporation. *To regulate fees, &c.*

This act shall take effect from and after its passage.

APPROVED, Jan. 31, 1835.

* JAILS AND JAILERS.

AN ACT concerning Jails and Jailers.

In force July 1, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That there shall be kept and maintained, in good and sufficient condition and repair, a common jail in each county within this state, at the permanent seat of justice for such county.* *A common jail to be kept in each county.*

SEC. 2. The sheriff of each county in this state shall have the custody, rule, keeping, and charge of the jail within the county, and of all prisoners in such jail, and may appoint a jailer under him, and remove him at pleasure, for whose conduct he shall be responsible. *Sheriff to be keeper.*

SEC. 3. It shall be the duty of the sheriff and jailer to receive from constables and other officers and confine in such jail, all persons who shall be apprehended by such constables, or other officers, for offences against this state, or who shall be committed

* See "Court Houses and Jails."

to such jail by any competent authority, until discharged by due course of law.

Debtors and criminals to be kept separate. SEC. 4. It shall not be lawful for any sheriff or jailer, to confine or keep debtors and persons committed for crimes in the same room, but they shall be confined and kept separate and apart from each other.

Convicts to pay prison expenses. SEC. 5. Every person who shall be committed to the common jail within any county of this state, by lawful authority, for any crime or misdemeanor, if he or she shall be convicted thereof, shall pay the expenses of arresting and conveying him or her to the said jail, and also of his or her support while in jail, before he or she shall be discharged, and the property of such person shall be subjected to the payment of such expenses from the time of his or her arrest; and all such expenses up to the time of conviction shall be included in the judgment for costs. All expenses incurred for the support of such convicted person after conviction, may be collected by order of the circuit court, from time to time as occasion may require: *Provided, however,* that said court may, in their discretion, refuse to make such order upon being satisfied on the oath of such convicted person, or otherwise, that such convicted person has no property or means of satisfying such expenses for his or her support.

Sheriff to provide for poor persons. SEC. 6. Whenever any person committed to jail upon any criminal process, under any law of this state, shall declare, on oath or affirmation, in writing, that he or she is unable to buy or procure necessary food, the sheriff or jailer shall provide such prisoner with necessary food, for which he shall be allowed a reasonable compensation, to be ascertained by the county commissioners' court, and paid as other county charges. And, if from the inclemency of the season, the sickness of the prisoner, or other cause, the sheriff shall be of opinion that additional clothes or bedding are necessary for such prisoner and such prisoner shall be unable to obtain or procure the same, the said sheriff shall furnish the same, for the use of such prisoner during his confinement; for which he shall be allowed a just compensation, and paid as aforesaid.

Prisoners may buy certain necessities. SEC. 7. Every sheriff and jailer, and other person or persons whatsoever, to whose custody or keeping any person or persons shall be committed, by virtue of any writ or process, or for any criminal offence, except on conviction of any felonious offence, shall permit and suffer him, her, or them so committed, at his, her, or their will and pleasure to send for, and have any cider, ale, beer, victuals, or other necessary drink or food, from what place and whom they please, and also to have and use such bedding, linen, and other things, as he, she, or they shall think fit, without detaining the same, or any part thereof, or enforcing or requiring him, her, or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her, or them, in using thereof, or relating thereto. And it shall be the duty of the grand jury, at each term, or a committee to consist of at least three members thereof, to visit the jail of their county, and examine the condition thereof, and enquire into the treatment of the prisoners, and make report thereof to the court. And it is hereby made the especial duty of the circuit court, at each term, to enquire

Grand jury to inspect jails and prisoner.

Duties of the circuit court.

and see that all prisoners, civil and criminal, are humanely treated.

SEC. 8. All persons convicted of any felonious or other high crime, and sentenced to imprisonment for six months or upwards, shall, for the whole term of their imprisonment, be kept upon inferior, but wholesome food. All spirituous liquors are prohibited to such prisoners unless by the direction of some respectable physician.

SEC. 9. It shall be the duty of the keeper of the jail, in every county within this state, to receive into his custody any prisoner or prisoners who may be, from time to time, committed to his charge under the authority of the United States, and to keep safely every such prisoner or prisoners, according to the warrant or precept of such commitment, until he or they shall be discharged by due course of the laws of the United States.

SEC. 10. The keeper of every jail aforesaid, shall be subject to the same pains and penalties, for any neglect or failure of duty herein, as he would be subject to, by the laws of this state for the like neglect or failure in the case of a prisoner committed under the authority of the said laws. *Provided always,* that the United States do pay, or cause to be paid, for the use and keeping of such jails, at the rate of fifty cents per month, for each person that shall, under their authority, be committed thereto, and also to the jailer such fees as he would be entitled to for like services rendered, in virtue of the existing laws of this state, during the time such prisoner shall be therein confined; and moreover, do support such of the said prisoners as shall be committed for offences.

SEC. 11. Whenever the sheriff of any county in this state shall be of opinion that the jail of his county is insufficient to secure the prisoners that shall be confined therein, it shall be his duty to give notice thereof to the county commissioners' court of such county; and also whenever any sheriff shall have in his custody any person or persons charged with any capital offence or other high crime against the laws of this state, and the jail of the county shall be insufficient, or if there shall be no jail in his county, he may, by and with the advice and direction of any of the judges of the circuit or supreme court, or of any two justices of the peace of his county employ a guard sufficient for the guarding and the safe keeping of such prisoner or prisoners in his own county, the said guard not to exceed, however, in any instance, more than three persons. The expenses of said guard to be audited and paid as other county expenses.

SEC. 12. It shall be lawful for the sheriff of any county in this state, when there shall happen to be no jail, or when the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other county, in the same circuit; and it is hereby made the duty of the sheriff or keeper of the jail of said county to receive such person or persons so committed as aforesaid, and him, her, or them, safely keep, subject to the order or orders of the circuit judge for the said circuit.

SEC. 13. It shall be the duty of the sheriff so committing any

Notice to
the circuit
judge.

person or persons as aforesaid, for any criminal offence, forthwith to notify the circuit judge for the circuit where such person or persons, so committed is, or are to be tried, of the committing of such person or persons to the jail of such other county; and transmit at the same time to such circuit judge a copy of the cause of the caption and detention of such person or persons. Whereupon, it shall be the duty of such circuit judge, within fifteen days next preceding the first day of the circuit court of the county, where such person or persons is or are to be tried, to issue a writ or writs of *habeas corpus*, directed to the sheriff or keeper of the jail of the county where such person or persons is or are committed, commanding him or them to have the body or bodies of such person or persons thus committed, together with the day and cause of his or their caption and detention, before the circuit court of the said county for the trial of such offences, on the first day of their next term of the said court; and it shall be the duty of the said sheriff or keeper of the jail to bring or cause to be brought, the said person or persons, thus committed as aforesaid, on the day and at the place mentioned in the said writ. And any sheriff or keeper of the jail as aforesaid, failing or neglecting to make return as aforesaid, and to bring the body or bodies of said person or persons according to the command of the said writ, shall be deemed guilty of a contempt of the said court, and shall be liable to be attached and committed to the jail of the said county, there to remain without bail or mainprize until he shall obey such writ: And shall moreover forfeit to the prisoner or party aggrieved, a sum not exceeding five hundred dollars, to be apportioned according to the nature, aggravations and circumstances of the case, and the injury which the party aggrieved may sustain thereby, to be recovered by the prisoner or party aggrieved, in an action on the case founded upon this statute; and the said sheriff or keeper of the jail, may also in the direction of the said court be removed from office, and rendered incapable of holding or executing the same thereafter. The sheriff for committing any prisoner as aforesaid, or for executing any writ of *habeas corpus*, under this act, shall be entitled to the like fees as are provided by law for similar services.

Expenses
imprison-
ment how
paid.

SEC. 14. In all cases where a person is committed from another county, for a criminal offence under this act, such county or the prisoner shall pay the expenses, in the same manner as if the commitment had been in the county where the offence was committed. And in civil suits the plaintiff or defendant, shall pay the expenses in the same manner as if the imprisonment had taken place in the same county where the suit was commenced.

Coroner to
be jailer
when sher-
iff is im-
prisoned.

SEC. 15. The sheriff may be imprisoned in the jail in his own county, and for the time that he shall be confined within the walls of the prison, the coroner shall have the custody, rule, keeping, and charge of the said jail, and shall by himself and his securities be answerable for the faithful discharge of his duties in that office.

Acts repeal-
ed.

SEC. 16. The act entitled "An act for the safe keeping of prisoners," approved March 22, 1819; and the act entitled "An act authorizing the commitment of persons to the jail of another county arrested in a county where there is not a sufficient jail," approved March 22d, 1819; and the "Act for the safe keeping of prison-

ers committed to any jail in this state, under the authority of the United States," approved January 20, 1821, are hereby repealed. This act to take effect the first day of July next.

APPROVED, Jan. 26, 1827.

JUDGMENTS AND EXECUTIONS.*

AN ACT concerning Judgments and Executions.

In force
May 1,
1825.

SEC. 1. *Be it enacted by the people of the State of Illinois,* Goods, represented in the General Assembly, That all and singular the chattels and lands may be sold on goods and chattels, lands, tenements and real estate of every person against whom any judgment has been, or hereafter shall be obtained, in any court of record, either at law or in equity, for any debt, damages, costs, or other sum of money, shall be liable to be sold upon execution to be issued upon such judgment, and the said judgment shall be a lien on such lands, tenements and real estate, from the last day of the term of the court in which the same may be rendered, for the period of seven years: *Provided,* That execution be issued at any time within one year on such judgment, and from and after the said seven years, the same shall cease to be a lien on any real estate, as against *bona fide* purchasers, or subsequent incumbrances by mortgage, judgment, or otherwise: *Pro-* *Provided,* That in case the party in whose favor any such judgment shall have been entered, shall be restrained by injunction out of chancery, or order of any judge or court, either from issuing execution, or selling thereon, the time which he shall be so restrained shall not be deemed or considered as any part of the said seven years. *Proviso.*

SEC. 2. That when any judgment shall have become a lien as aforesaid, and the defendant happen to die before execution shall have been issued thereon, the remedy of the person in whose favor the said judgment shall have been rendered, shall not be delayed or suspended by reason of the non-age of any heir or heirs of such defendant; but no execution shall issue upon such judgment, until the expiration of one year after the death of such defendant; nor shall any previous law of this state, which gives no preference to the claims of a creditor of a deceased debtor, be so construed as to impair or affect the lien of any judgment as aforesaid. *Defendant dying before execution issued remedy not delayed, &c.*

SEC. 3. That the legal holder or holders by record, of any certificate of purchase of lands from the United States, shall be deemed to be within the true intent and meaning of this act. *Certificate of land liable to execution.*

SEC. 4. That in all executions to be issued upon judgments hereafter to be recovered upon contracts either express or implied, it shall be lawful to direct the collection of interest on the said judgment from the time of recovering the same until paid, at the rate of six per centum per annum. *Interest allowed on judgments.*

* See "Act for the construction of the Ill. and Mich. Canal," sec. 27.

Execution may issue against the body, &c. of defendant.

SEC. 5. That it shall be lawful for the party in whose favor any judgment as aforesaid may be obtained, to have an execution against the body of such debtor, or against his goods and chattels, lands and tenements, in the usual form, or both in succession, and to be directed to any county in the state, at the election of such party :

Proviso.

Provided, however, That no execution shall be issued against the body, or the goods and chattels, lands and tenements of any heir, executor, or administrator, unless such person shall have made his estate liable to the same debt, by false pleading, or otherwise : *And provided, also,* That no execution shall issue against the body of such debtor, except in the manner, and as is provided and declared in the act entitled " An act to abolish imprisonment for debt in certain cases," approved, February 17, 1823 ; but nothing in this act contained, nor in the said act abolishing imprisonment for debt, shall restrain or prevent any execution being issued against the body of any defendant, where the judgment shall have been obtained for a tort or trespass committed by said defendant.

Execution to be returned in 90 days.

Sheriff to endorse the time of receiving execution.

SEC. 6. That all executions shall be made returnable ninety days after date, and no writ of execution shall bind the property of the goods and chattels of any person against whom such writ shall be issued ; but from the time that such writ shall be delivered to the sheriff, or other officer, to be executed ; and for the better manifestation of the said time, the sheriff, or other officer shall, on the receipt of every such writ, endorse upon the back thereof the hour, day of the month, and year, when he received the same.

Replevy bonds to have the force and effect of judgments. Not repleviable.

SEC. 7. That in all cases where executions have been issued from the courts of record, and replevied pursuant to the laws of this state, the replevy bonds so taken shall have the same force and effect under this act, as they would have under those laws ; and when executions shall be issued on those bonds, no further replevy of any kind shall be allowed ; but such proceedings may be had thereon, as in other cases of execution under this act.

Lands, &c. to be sold by public vendue. And be advertised.

SEC. 8. That no lands or tenements shall be sold by virtue of any execution aforesaid, unless such sale be at public vendue, and between the hours of nine in the morning and the setting of the sun of the same day, nor unless the time and place of holding such sale shall have been previously advertised, for the space of twenty days, by putting up written or printed notices thereof in at least three of the most public places in the county where the lands may be situated, specifying the name of the plaintiff and defendant in the execution, and in all which notices, the lands or tenements to be sold shall be described with reasonable certainty, by setting forth their number, or by some other appropriate description ; and if any sheriff or other officer shall sell any lands or tenements by virtue of any such execution, otherwise than in the manner aforesaid, or without such previous notice, or if any person shall take down or deface any such notice, previous to the day of sale, unless upon satisfaction of the judgment on which such execution issued, or without the consent of the plaintiff and defendant herein the sheriff, or other officer so offending, every such offence, forfeit and pay the sum of fifty dollars, and every person so offending by taking down or defacing such notice, shall forfeit and pay the like sum of fifty dollars, to be respectively recovered, with cost of suit, in any

Penalty on sheriff for violating the provisions of this section. Penalty for taking down advertisements.

court of record in this state, by the person whose lands may have been advertised for sale : *Provided, however,* that no such offence, nor shall any irregularity on the part of the sheriff or other officer having the execution, be deemed to affect the validity of any sale made under it, unless it shall be made appear that the purchaser had notice of such irregularity.

Proviso.

SEC. 9. That when any real estate or personal property, shall be levied upon by virtue of any execution issued as aforesaid, it shall be the duty of the sheriff, or other officer making such levy, to cause the same to be valued or appraised by three disinterested freeholders of the county where the same may be situated, to whom he shall administer an oath to make such valuation and appraisement according to the best of their judgments, which valuation or appraisement shall be entered on the back of the execution, or on a paper thereto annexed, and subscribed with their names, as appraisers, describing the number of acres, if there be more than one ; and upon being exposed to sale at public vendue as aforesaid, the said real estate may be struck off to the highest bidder for what it will bring, and without regard to such valuation or appraisement : *Provided, however,* that if the execution, by virtue of which the sale be made, shall have been issued upon a judgment heretofore rendered, or on a replevy bond taken or given before this act takes effect, or upon a judgment hereafter to be rendered upon any contract made, or upon a cause of action accrued, or liability incurred, before this act takes effect, then, and in that case, the said premises, real estate, or personal property, shall not be struck off to the highest bidder, unless the bid amount to two-thirds of such valuation or appraisement. And if the plaintiff in the execution will not bid two-thirds of such valuation or appraisement, or take the said premises, or real estate, or personal property at that rate, or so much thereof, at his election, as will satisfy the execution, the judgment upon which it issued shall altogether cease to be a lien as against all other judgments, or subsequent *bona fide* purchasers, or incumbrances by mortgage, judgment, or otherwise : *Provided, always,* that the plaintiff in any execution may elect on what property he will have the same levied, except the land on which the defendant resides, and his personal property, which shall be last taken in execution : *And provided, also,* that when any property, real or personal, shall be taken in execution, if such property be susceptible of division, it shall be sold in such quantities as may be necessary to satisfy such execution and costs.

Property to be valued.

May be sold to highest bidder. Proviso.

If property will not bring two-thirds its valuation.

Judgment ceases to be a lien.

Proviso.

Proviso.

SEC. 10. That whenever any lands or tenements shall be sold after this act takes effect, by virtue of any execution already issued, or that shall hereafter be issued, it shall be the duty of the sheriff or other officer, instead of executing a deed for the premises sold, to give to the purchaser or purchasers of such land or tenements, a certificate in writing, describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed, as is provided in and by this act, and such sheriff or other officer shall, within ten days from such sale, file in the office of the clerk of the county, a duplicate of such certificate,

Sheriff to give a certificate of purchase.

Sheriff to file a duplicate of certificate in clerk's office.

signed by him: and such certificate, or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.

*Defendant
&c. may
redeem real
property in
12 months.*

SEC. 11. That it shall be lawful for any defendant, his heirs, executors, administrators, or grantees, whose lands or tenements shall be sold after this act takes effect, by virtue of any execution within twelve months from such sale, to redeem such lands or tenements, by paying to the purchaser thereof, his executors, administrators, or assigns, or to the sheriff or other officer who sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given, or bid, if purchased by the plaintiff in the execution, together with interest thereon at the rate of ten per centum from the time of such sale, and on such sum being made as aforesaid, the said sale and the certificate thereupon granted, shall be null and void.

*With ten
per cent.
interest.*

*If defend-
ant does
not redeem,
judgment
creditor
may re-
deem in 15
months.*

SEC. 12. That if default be made by any such defendant to redeem the lands or tenements which have been so sold, it shall be lawful for any other judgment creditor to redeem the same in the manner prescribed in the preceding section, within fifteen months after such sale, and he shall be entitled to all the rights of the original purchaser.

*Property
not re-
deemed
sheriff to
give a
deed.*

SEC. 13. That if such lands or tenements so sold, shall not be redeemed as aforesaid, either by the defendant or by such creditor as aforesaid, within fifteen months from the time of such sale, it shall be the duty of the sheriff or other officer, who sold the same, or his successor in office, or his executors or administrators, to complete such sale, by executing a deed to the purchaser; and if any creditor shall redeem such lands or tenements as aforesaid, it shall be the duty of the sheriff, or other officer, on the expiration of fifteen months from the time of such sale, to execute a deed to such creditor as the original purchaser; and such deeds shall be as valid and effectual in law, as if such creditor had been the original purchaser.

*Sheriff's
deed to be
acknow-
ledged be-
fore the
clerk.*

**Amended.*

SEC. 14. That when a sheriff or other officer shall execute a deed for lands or tenements, which he may have sold by virtue of any execution, it shall be his duty to acknowledge the same before the clerk of the court whence it issued, or in open court, unless it issued from the supreme court, in which case the acknowledgment may be made before the clerk of any county commissioners' or circuit court: and the clerk's certificate of such acknowledgment shall be deemed *prima facie* evidence of the execution thereof.

*Sheriff go-
ing out of
office his
successor
to make
deed.*

*Deputy
sheriff same
powers as
principal.*

SEC. 15. That when any sheriff or other officer shall go out of office, not having made a deed for any lands or tenements, which he may have sold, by virtue of any execution, it shall be lawful for him, his successors in office, or if he be dead, for his successor, his executor, or administrator, to make and acknowledge a deed for the same; and in no case shall the death of a sheriff take away or suspend the powers of the deputy sheriff of such sheriff; but such deputy may do all acts and things which he could have done, had the sheriff remained in full life, until his powers be superseded by the appointment of a principal sheriff.

* See act of Jan. 16, 1836, under the head of "Conveyances."

SEC. 16. That no goods or chattels shall be sold by virtue of any execution aforesaid, unless previous notice of such sale shall have been given, for at least ten days successively, by putting up written or printed notices thereof, in three of the most public places in the county where such sale is to be, specifying the time and place where such goods and chattels are to be sold; and any person or persons who shall take down or deface any such advertisement, shall incur the same penalties as are herein before imposed, for taking down and defacing notices of the sale of lands and tenements.

*Ten day's
notice to be
given of
sale of per-
sonal prop-
erty.*

*Penalty for
defacing
notice.*

SEC. 17. That whenever a sheriff, constable, or other officer, shall have levied any execution, issued from the courts of record, aforesaid, or upon the judgment of any justice of the peace, rendered in a civil suit or action upon the personal property of any defendant, or shall be about to make such levy, and the said defendant be desirous of retaining the same in his possession, it may be lawful for such sheriff, constable, or other officer, to take a bond from the defendant, with security, that such property shall be forthcoming, or delivered, at such time and place as may be named in the condition, and that the same shall not be disposed of, injured or the like; and a bond, so taken, shall not be deemed void, as taken by color of office.

*Defendant
may replevy
property
by giving
bond.*

SEC. 18. That if default be made in the payment of any sum of money, secured by mortgage on lands and tenements, duly executed and recorded, and if the payment be by instalments, and the last shall have become due, it shall be lawful for the mortgagee, his executors or administrators, to sue out a writ of scire facias, from the clerk's office of the circuit court of the county in which the said mortgaged premises may be situated, or any part thereof, directed to the sheriff, or other proper officer, of such county, requiring him to make known to the mortgagor, or if he be dead, to his heirs, executors, or administrators, to shew cause, if any they have, why judgment should not be rendered for such sum of money as may be due by virtue of said mortgage; and upon the appearance of the party, named as a defendant, in said writ of scire facias, the court may proceed to judgment, as in other cases: but if said scire facias be returned nihil, or that the defendant is not found, an alias scire facias may be issued; and if it be returned as aforesaid, or if the defendant appear and plead, or make default, the court may proceed to give judgment with costs, for such sum as may be due by said mortgagee, or appear to be due by the pleadings, or after defence, if any be made; and also that said mortgaged premises be sold to satisfy such judgment, and may award or direct a special writ of fieri facias, for that purpose, to the county or counties in which said mortgaged premises may be situate, and on which the like proceedings may be had, as in other cases of execution levied upon real estate: *Provided, however,* that the judgment aforesaid shall create no lien on any other lands or tenements than the mortgaged premises, nor shall any other real or personal property of the mortgagor be liable to satisfy the same; but nothing herein contained shall be so construed as to affect any collateral security, given by the mortgagor, for the payment of the same

*Mortgagee
may sue for
scire facias.*

*If scire
facias be
returned
nihil, alias
may issue.
Mortgaged
property
may be
sold.*

Proviso.

sum of money, or any part thereof, secured by the mortgage deed.

Certain property exempt from execution.

SEC. 19. That every person, being the head of a family and living with it, shall be permitted to retain and enjoy, exempt from execution, one milch cow and calf, the wearing apparel of himself and family, necessary bed and bedding, one spinning wheel and pair of cards, provisions not more than sufficient for the support of the family three months, and the necessary utensils for cooking, and necessary household furniture, not exceeding in value fifteen dollars : and if any sheriff or other officer shall take or seize any of said articles of personal property by virtue of any execution, he shall be liable to the party injured for three times the value thereof, to [be] recovered by action of trespass, with costs of suit : *Provided*, that the wearing apparel of every person shall be exempt from execution.

SEC. 20. That nothing herein contained shall be so understood as to impair the existing right of any judgment debtor to discharge or pay the judgment against him in notes of the state bank of Illinois or its branches. And it shall be the duty of all courts, whether of record or justices of the peace, where actions are brought on contracts which have been or shall hereafter be made for the payment of or in notes of the state bank of Illinois, to render judgment for the specie value of such notes, at the time when such payment ought to have been made, according to the terms of such contract.

Judgments in favor of the state bank.

Must be paid in bills of that institution.

SEC. 21. That when notes, bonds, bills, obligations, mortgages, or other securities, have been or shall hereafter be made or executed to the president and directors of the state bank of Illinois, and evidently for the payment of money in the notes of said bank, and judgment has been or shall be obtained upon any such note, bond, bill, obligation, mortgage, or other security, by reducing the number of dollars therein expressed, to their specie value, it shall be lawful and the duty of every such judgment debtor to satisfy and discharge the same judgment, or any execution which may be issued thereon, by paying the same number of dollars in the notes of the said bank, as are or may be specified in such note, with the addition of interest and costs in like manner payable. And when judgment shall hereafter be rendered upon any such note, bond, bill, obligation, mortgage, or other security, it shall be the duty of the court, immediately after entering the judgment, to note upon the record, by way of memorandum, the number of dollars in notes of the said bank, with interest then due thereon. And whenever execution shall or may issue on such judgment, the clerk shall endorse the same note or memorandum on the back of the execution, and paying the sum so endorsed, with interest thereafter accruing, and costs in the notes of the said bank, shall discharge the execution and judgment : and in case of refusal to pay the same, the sheriff or other officer having the execution, shall collect it in specie, or in the notes of said bank, as in other cases of execution.

SEC. 22. That nothing in this act contained shall be so constructed as to apply to judgments rendered by justices of the

peace on executions issued by them, except sections seventeen and nineteen.

SEC. 23. That a party out of term intending to move to set aside or quash any execution, replevin bond, or other proceedings, may apply to the judge, at his chamber, for a certificate, (and which the said judge may in his discretion grant,) certifying that there is probable cause for staying further proceedings until the order of the court on the motion ; and a service of a copy of the certificate at the time of, or after the service of the notice of the motion, shall thenceforth stay all further proceedings accordingly.

Judge may grant order to stay execution.

SEC. 24. That the act entitled " An act concerning judgments and executions," approved, February 17, 1823 ; and the acts and parts of acts thereby repealed, be, and the same are hereby declared to be repealed. This act to take effect from and after the first day of May next.

Certain acts repealed.

APPROVED, January 17, 1825.

JURORS.

AN ACT prescribing the mode of summoning Grand and Petit Jurors, and defining their qualifications and duties. *In force June 1, 1827.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all free white male taxable inhabitants in any of the counties in this state, being natural born citizens of the United States, or naturalized according to the constitution and laws of the United States, and of this state, between the ages of twenty-one and sixty years, not being judges of the supreme or circuit court, county commissioners, judges of probate, clerks of the circuit or county commissioners' court, sheriffs, coroners, postmasters, licensed attorneys, overseers of the highway, or occupiers of mills, ferries, toll-bridges, or turnpike roads, being of sound mind and discretion, and not subject to any bodily infirmity, amounting to a disability, shall be considered and deemed as competent persons, (except in cases where legal disabilities may be imposed for the commission of some criminal offence,) to serve on all grand and petit juries, in and for the bodies of their counties respectively.

Who may be jurors.

SEC. 2. It shall be the duty of the county commissioners' court in each of the counties in this state, wherein a circuit court is directed to be holden, at least twenty days before the sitting of such court, to select twenty three persons, possessing the qualifications aforesaid, and as nearly as may be, a proportionate number from each township in their respective counties, and to cause their clerk, within five days thereafter, to issue and deliver to the sheriff, or if there be no sheriff, or he be disqualified, then to the coroner of the county wherein the court is to be held, a summons, commanding him to summon the persons so selected as aforesaid, to

Commissioners shall select grand jurors.

appear before the said circuit court, at or before the hour of eleven o'clock, A. M. on the first day of the term thereof, to serve as grand jurors, any sixteen of whom shall be sufficient to constitute a grand jury; which said summons shall be served at least five days before the sitting of the court, either by reading it to the person to be summoned, or by leaving an attested copy thereof at his last usual place of abode.

16 shall make a grand jury.

Foreman may swear witnesses.

SEC. 3. After the grand jury is empanelled, it shall be the duty of the court to appoint a foreman, who shall have power to swear or affirm witnesses to testify before them: and whose duty it shall be, when the grand jury, or any twelve of them, find a bill of indictment, to be supported by good and sufficient evidence, to endorse thereon "a true bill;" and when they do not find a bill to be supported by sufficient evidence, to endorse thereon "not a true bill;" and shall in either case, sign his name as foreman, at the foot of said endorsement; and shall also in each case in which a true bill shall be returned into court as aforesaid, note thereon the name or names of the witness or witnesses, upon whose evidence the same shall have been found.

Oath of the foreman.

SEC. 4. Before the grand jury shall enter upon the discharge of their duties, the following oath shall be administered to the foreman, to wit: "You, as foreman of this inquest, do solemnly swear, (or affirm, as the case may be,) that you will diligently inquire into, and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge, touching the present service; you shall present no person through malice, hatred, or ill will, nor shall you leave any unpresented through fear, favor, or affection, or for any fee or reward, or for any hope or promise thereof; but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God." And the following oath or affirmation shall be administered to the other jurors, to wit: "The same oath that A. B., your foreman, has just taken before you on his part, you and each of you shall well and truly keep and observe on your respective parts, so help you God."

What evidence shall make presentments.

SEC. 5. No grand jury shall make presentments of their own knowledge, upon the information of a less number than two of their own body, unless the juror giving the information is previously sworn as a witness, in which case, if the evidence shall be deemed sufficient, an indictment may be found thereon, in like manner as upon the evidence of any other witness, who may not be of the jury.

Petit jury selected by county commissioners' court.

SEC. 6. It shall also be the duty of the county commissioners' court in each of the counties in this state wherein a circuit court is directed to be held as aforesaid, at least twenty days before the sitting of such court as aforesaid, to select twenty-four persons possessing the qualifications aforesaid, who shall compose and constitute two full petit juries, to serve as such at the next succeeding term of the circuit court, in each county respectively, to be summoned in like manner as is herein before directed in the case of grand juries.

SEC. 7. It shall be the duty of the clerk of the circuit court,

at the commencement of each term, to write the name of each petit juror on a separate ticket, and put the whole into a box or other place for safe keeping; and as often as it shall be necessary to empanel a jury, the clerk, sheriff, or coroner shall, in the presence of the court, draw by chance, twelve names out of such box or other place, which shall designate the twelve to be sworn on the jury, and in the same manner for the second jury, in their turn, as the court may, from time to time, order and direct.

SEC. 8. In all cases where any sheriff or other officer shall be commanded to execute any summons, as aforesaid, he shall be required to make timely return thereof to the clerk, who may have issued the same, with an endorsement thereon, certifying on whom it has been executed, and the time when; and in default of so doing, such sheriff or other officer shall be considered as guilty of a contempt, and may be fined for the use of the proper county, in any sum not less than ten, nor more than fifty dollars, unless such sheriff or other officer shall seasonably make his excuse, to the satisfaction and acceptance of the court.

SEC. 9. If a sufficient number of grand or petit jurors, when selected and summoned as aforesaid, shall not appear, or if by reason of challenges, or any other cause, there shall not be a sufficient number of qualified persons to make up the pannel, the court may order the sheriff to return without delay, such number of good and lawful men of the county as may be necessary for that purpose; and when the sheriff is interested, or related to either of the parties, the court may direct the coroner to make such return; and if any circuit court should at any time sit before the county commissioners' court shall have made a selection of grand or petit jurors, as aforesaid, or if on any account the whole pannel in either case shall fail to attend, the court may order the sheriff or other officer to summon from the bystanders, being qualified persons, as aforesaid, a sufficient number to supply such deficiency: who shall continue to serve for the remainder of the term, unless they shall be sooner discharged by the court.

SEC. 10. Every person who shall fail to attend, when lawfully summoned to appear as a grand or petit juror, as aforesaid, without having a reasonable excuse, shall be considered as guilty of a contempt, and shall be fined by the courts, respectively, in any sum not less than five, nor more than twenty dollars, for the use of the proper county; unless good cause be shewn for such default at, or before the next term of such court; and it shall be the duty of the clerk to issue a summons against all such delinquents (where such persons shall not come in without process) to shew cause at the next succeeding term of such court, why he or they should not be fined for such contempt; at which or any subsequent term, the court shall proceed to assess said fine, unless the person or persons so summoned and failing to attend, as aforesaid, shall appear and shew good cause for such delinquency: *Provided*, that the oath or affirmation of any such delinquent shall at all times be received as competent evidence in his favor.

SEC. 11. In case of the death, sickness, or non-attendance of any grand or petit juror, after he shall have been sworn upon the jury, or where any such juror, as aforesaid, after being sworn, as

Summons, how executed and returned.

Tales men.

Comm'rs court making no selection, the circuit court may order a jury to be summoned.

Punishment for non attendance as a juror.

Proceedings against delinquent jurors.

aforsaid, shall, for any reasonable cause, be dismissed, or discharged, it shall be lawful for the court to cause others, if necessary, to be summoned and sworn in his or their stead.

Compensation of petit jurors. SEC. 12. Each petit juror shall receive twenty-five cents for each case which he may be sworn to try, to be advanced by the plaintiff, and taxed in the bill of costs against the defendant, if he be cast in the suit, except in criminal cases, where no allowance or charge shall be made, either to jurors or witnesses.

Jurors privileged from arrest. SEC. 13. All grand and petit jurors shall be privileged from arrest in all cases, except for treason, felony, breach of the peace, or other criminal offence, during their attendance at court, going to and returning from the same; allowing one day for every twenty miles from and to their several places of abode; and all arrests, in such cases, shall be deemed as illegal and void.

Rotation in service. SEC. 14. It shall be the duty of the county commissioners' court to arrange and select the grand and petit jurors, as aforesaid, so that no one person shall serve on the jury a second time, before all fit persons of the county shall have respectively served in rotation, according to the best information that can be obtained.

Acts repealed. SEC. 15. That the act entitled "An act prescribing the mode of summoning grand jurors," approved March 23d, 1819; the act entitled "An act concerning petit jurors," approved March 25th, 1819; the act entitled "An act to amend an act entitled an act prescribing the mode of summoning grand jurors," approved February 9th, 1821; the act entitled "An act amending an act entitled an act prescribing the mode of summoning grand jurors," approved February 18th, 1823, and all other acts and parts of acts coming within the purview of, or repugnant to this act, be, and the same are hereby repealed. This act to take effect from and after the first day of June next.

APPROVED, February 7, 1827.

In force Jan. 24, 1834. AN ACT to amend "An act prescribing the mode of Summoning Grand and Petit Jurors, and defining their qualifications," approved February 7, 1827.

Part of law repealed. SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That so much of the eighth section of the act to which this is an amendment, as requires sheriffs or other officers to make timely return of any summons to the clerks that issued the same, be, and the same is hereby repealed.

Sheriff's duty in relation thereto. SEC. 2. Be it further enacted, That in all cases where any sheriff or other officer shall be commanded to execute any summons, by virtue of the aforesaid act, he shall be required to make timely return of the same, on or before the return day thereof, to the clerk of the circuit court.

APPROVED, January 24, 1835.

AN ACT to amend "An act prescribing the mode of Summoning Grand and Petit Jurors, and defining their qualifications and duties." *In force Feb. 13, 1835.*

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the county commissioners' courts of the several counties of this State, shall have power to make an allowance out of the county treasury of their respective counties, to all Grand and Petit Jurymen who may be regularly summoned, and shall actually serve as such in the Circuit Court of their counties, a sum not exceeding seventy-five cents per day. *County commissioners shall have power to compensate jurymen.*

SEC. 2. The Clerk of the Circuit Court shall furnish to each of the Jurors aforesaid, (and without fee,) whenever he shall be discharged from further service by the Court at any term thereof, a certificate of the number of days he may have attended at such term, and upon the presentment thereof to the County Treasurer, he shall pay to such person the sum above provided for his services: *Provided*, The Clerk shall not furnish such certificate, unless the county commissioners' court shall have first made the allowance as required in the first section. *Clerk of circuit court to furnish each jurymen with a certificate. Proviso.*

SEC. 3. That the fee of three dollars now paid under the provisions of the act to which this is an amendment, for compensating Petit Jurors; also, the docket fee now required by law to be paid by the unsuccessful to the successful party in each suit in law or equity in any of the Circuit Courts of this State, shall be paid to the Clerk of said Circuit Court, and by him to be paid over to the Treasurer of the county for the use of the people thereof: *Petit jurors' fee, and docket fee shall constitute a fund for the payment of jurors.* *Provided*, The same shall always remain as a fund for the payment of Grand and Petit Jurors.

APPROVED, Feb. 13, 1835.

JUSTICES OF THE PEACE AND CONSTABLES.

AN ACT to provide for the election of Justices of the Peace and Constables. *In force Dec. 30, 1826.*

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That from and after the first day of October next, the act entitled "An act regulating the manner of appointing justices of the peace," approved February 19, 1819, shall be and the same is hereby repealed. *Act repealed.*

SEC. 2. It shall be the duty of the courts of county commissioners of each county in this State, at their next June term, to divide their respective counties into a convenient number of districts, not less than two, nor more* than eight, distinctly defining the *Districts.*

* Amended: See Act of Jan. 7, 1835, following.

boundaries of each district, giving to each a name, to appoint a place therein for holding the elections hereinafter mentioned, and to cause the same to be entered of record in their respective courts. Should any of said courts fail or neglect to lay off their county into districts as aforesaid, at their said June term, it shall be their duty to call a special term of the court, for that purpose, and to proceed to lay off their county into districts, in all respects as aforesaid. It shall be the duty of the clerks of said courts respectively to make out, forthwith, as many copies of said records, as there shall be districts in his county and to deliver the same to the sheriff, whose duty it shall be within ten days after the close of the term of the court at which the county shall be so divided into districts, to post up, at the place appointed for holding elections, in each of said districts, one of said copies.

Clerks to furnish the sheriff with copies of orders.

Judges of election appointed...

To continue in office 4 years.

Vacancies how filled.

Notice of election and proceeding therein.

SEC. 3. The said courts shall, respectively, at their said June term, and at their June term every fourth year thereafter, appoint three electors in each of said districts to be judges of election therein; and should any of said courts, at any such term, fail to appoint judges of election, it shall be their duty to call a court for that purpose; and judges of election, who shall be appointed as aforesaid, shall continue in office for four years, and until their successors shall be appointed. When a vacancy shall happen in the office of judge of election, or when any such judge shall fail to attend, or refuse to serve, the vacancy shall be filled, or the judge appointed in the manner prescribed in like cases by the general election law. The said judges, and all other judges to be appointed by this act, shall give the notice of election, be qualified, appoint clerks, who shall be qualified, and the elections hereinafter mentioned, shall be conducted, returns thereof made, opened, examined, abstracts thereof made, and transmitted to the office of secretary of state, in the manner prescribed by law for the election of sheriffs, and the said judges of election shall be notified of their appointment in the manner prescribed for notifying other judges of election: *Provided*, That nothing in this act shall be so construed as to give the judges of the election or clerks any compensation for their services.

Number of justices in each district to be elected.

To continue in office 4 years.

Who qualified to vote.

Vacancies how filled.

SEC. 4. An election shall be held in each of said districts, on the first Monday in August next, and on the first Monday in August every fourth year thereafter, for two justices of the peace in each of said districts, except the district in which the county seat shall be, in which district there shall be three justices of the peace elected, and the justices so elected, shall continue in office for the term of four years, and until their successors shall be elected and qualified to office, respectively; at which election the inhabitants of a district qualified to vote at the general election, shall be entitled to vote. The persons receiving the highest number of votes in a district, shall be declared duly elected.

SEC. 5. When a vacancy shall happen in the office of justice of the peace in a district under this act, it shall be the duty of the clerk of the county commissioners' court of the county in which the vacancy shall so happen, to issue his order to the judges of election in the district, requiring them on a certain day, not less than twenty days from the date of such order, to hold an election

to fill such vacancy, and the said judges shall, at the time appointed in said order, hold an election to fill such vacancy; and conduct the same, and make returns thereof, which shall be opened, examined, abstracts thereof made and transmitted to the secretary's office, in the manner directed in the fourth section.

SEC. 6. When a new county shall hereafter be created, it shall be the duty of the court of county commissioners thereof, at their first term, to divide the same into districts as aforesaid, and appoint judges of election, and a time and place for holding elections therein as aforesaid, and to cause the same to be entered of record; and if, from any cause, the said court shall fail or neglect the duty aforesaid, at their said first term, it shall be their duty to hold a special term for that purpose; and the clerk shall make out copies of such record, and the sheriff shall post up the same, as is provided in the second section of this act; and elections shall be held therein, for justices of the peace, returns thereof made, examined, and transmitted, in all respects as provided in the fourth section of this act; and justices of the peace so elected, shall continue in office until the next quadrennial election of justices of the peace, and until their successors shall be elected and qualified.

Elections in new counties.

SEC. 9. Justices of the peace, who shall be elected under the authority of this act, shall have jurisdiction in their respective counties, and shall be commissioned by the governor, and sworn into office, as now required by law.

Jurisdiction of justices, &c.

SEC. 10. Any clerk, sheriff, justice of the peace, judge of the election, or other person, who shall fail, neglect, or refuse to perform any of the duties enjoined by this act, relative to elections or the delivery of statutes, dockets, books, or papers, shall, for any such failure, neglect, or omission, forfeit and pay, for the use of the county, to be recovered by action of debt, in the name of the county commissioners, in any court having jurisdiction thereof, if a judge of election, clerk, or sheriff, the sum of ten dollars, and if a justice of the peace, the sum of one hundred dollars.

Penalty for disobeying the provisions of act.

SEC. 11. On the first Monday in August next, and on the first Monday in August every fourth year thereafter, at the time of electing justices of the peace, there shall be elected in the same manner two constables for each of said districts, who shall continue in office for the same term as justices of the peace; and when a vacancy shall happen in the office of constable, it shall be filled in the manner prescribed for filling vacancies in the office of justice of the peace. And when a new county shall be created, two constables shall be elected in each district therein, in the same manner, at the same time, and to continue in office for the same term, as justices of the peace are required in new counties.

Election of constables.

Vacancies how filled.

SEC. 13. Constables to be elected under this act, shall be sworn into office before entering on the duties of the office, as now required by law. So much of the act recited in the first section of this act as provides for the appointment of justice of the peace, is hereby repealed; and so much of any law, as authorizes courts of county commissioners to appoint constables, shall be repealed from and after the tenth day of September next. Nothing in this act contained, shall be construed so as to prevent any justice of the peace who shall be commissioned and qualified under this act, when

Constables sworn into office.

Laws repealed.

Proviso.

there shall not be a constable in his district, from appointing a constable, as now required by law, who shall be qualified as now required in such cases, and shall continue in office until superseded by an election.

APPROVED, Dec. 30, 1826.

See Acts of Jan. 7, and 29, and Feb. 6, 1835, under the head of "Elections."

In force June 1, 1827.

AN ACT concerning Justices of the Peace and Constables.

Jurisdiction of justices of the peace.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the justices of the peace in this state, shall have jurisdiction within their respective counties, to hear and determine all civil suits, for any debts or demands of the following description, viz: For any debt claimed to be due on a promissory note, contract, or agreement in writing, where the whole amount of such written contract, agreement, or note shall not exceed one hundred dollars. For any debt due upon a verbal contract or promise for a valuable consideration, not exceeding one hundred dollars. For any debt claimed to be due for goods, wares, or merchandise sold and delivered; or for work or labor done, or services rendered, where the amount claimed shall not exceed one hundred dollars. For any debt claimed to be due for money had and received, for money lent, for money paid by the plaintiff for the defendant at his request, and for money received by the defendant for the plaintiff's use, not exceeding one hundred dollars. For any debt claimed to be due upon open and unsettled accounts between individuals, where the whole amount of the accounts of either party shall not exceed one hundred dollars. For any debt claimed to be due upon any settled account, where the balance settled and ascertained between the parties, and remaining unpaid, shall not exceed one hundred dollars. For any debt claimed to be due upon a contract for rent, not exceeding one hundred dollars. For any debt claimed to be due for any specific article of property, whether due by bond, note, or verbal promise, not exceeding one hundred dollars. And for all debts claimed to be due, not exceeding one hundred dollars, for which the action of debt or of assumpsit would lie: Provided, That nothing herein contained, shall be construed so as to vest a justice of the peace with jurisdiction, in any case in which an executor or administrator shall be a party, where the sum demanded exceeds twenty dollars, except for debts due for property purchased at an executor or administrator's sale, when the same does not exceed one hundred dollars.

See act of Jan. 12, 1827 and act of March 2, 1833.

Where executors and administrators are parties.

Their docket.

SEC. 2. That it shall be the duty of every justice, whenever a suit shall be commenced before him, to record, in a book kept for that purpose, the names of the parties, the amount and nature of the debt sued for, the date and description of the process issued, and the name of the officer to whom such process shall be deliv-

ered, and throughout the whole of the proceedings in any suit, it shall be his duty, whenever any process shall be issued or returned, or any order made, or judgment rendered, to make a written memorandum of the same, in the same book, and to file and safely keep all papers given him in charge.

SEC. 3. Every suit before a justice, except such as are herein-after provided for, in a different manner, shall be commenced by summons, which shall be in the following form, as nearly as the case will admit, viz:

STATE OF ILLINOIS, } The people of the State of Illinois, to any Summons. COUNTY. } constable of said county, Greeting.

You are hereby commanded to summon A. B. to appear before me, at _____ on the _____ day of _____ at _____ o'clock, to answer the complaint of C. D. for a failure to pay him a certain demand not exceeding one hundred dollars; and thereof make due return as the law directs. Given under my hand and seal, this _____ day of _____ 182_____

JOHN DOE, J. P.

In which summons the justice shall specify a certain place, day, and hour for the trial, not less than five, nor more than fifteen days from the date of such summons; at which time and place the defendant is to appear; which process shall be served at least three days before the time of trial mentioned therein, by reading the same to the defendant or defendants. Service thereof.

SEC. 4. If, previous to the commencement of a suit, the plaintiff shall make oath that there is danger that the debt or claim of such plaintiff will be lost, unless the defendant be held to bail, and shall state, under oath, the cause of such danger, so as to satisfy the justice that there is reason to apprehend such loss, the justice shall issue a warrant which shall be in the following form, as nearly as the case will admit, viz:

STATE OF ILLINOIS, } The people of the State of Illinois, to any Capias. COUNTY. } constable of said county, Greeting:

You are hereby commanded to take the body of _____ and bring him forthwith before me, unless special bail be entered; and if such bail be entered, you will then command him to appear before me, at _____ on the _____ day of _____ at _____ o'clock, to answer the complaint of A. B. for a failure to pay him a certain demand not exceeding one hundred dollars; and hereof make due return as the law directs. Given under my hand and seal this _____ day of _____ 182_____

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And in all cases the defendant shall have a right to release his or her body arrested by virtue of such process, by giving special bail to the constable executing the same, which shall be endorsed on the back of the warrant, in the following form, as nearly as the case will admit, viz: "I, G. F. acknowledge myself special bail Special bail."

for the within named C. D. Witness my hand this day of
 182 G. F." Which endorsement shall be signed
 by one or more securities, to be approved by the constable taking
 the same, and shall have the force and effect of a recognizance of
 bail, the condition of which is, that the defendant, if judgment
 shall be given against him or her, will pay the same with costs, or
 surrender his or her body in execution, and in default of such pay-
 ment or surrender, the goods and chattels of the bail shall be liable
 for the payment of the judgment and costs: *Provided*, That if the
 body of the defendant shall be rendered in execution by himself or
 his bail, within thirty days after the issuing of such execution, or if
 a sufficiency of the defendant's property shall be found to satisfy
 the judgment and costs, the bail shall be exonerated; but if neither
 the body of the defendant shall be surrendered, nor a sufficiency of
 his or her property can be found within the time aforesaid, to pay
 the judgment and costs, then the justice shall issue execution against
 the bail, who shall be dealt with in the same manner as if he were
 defendant.

*Effect thereof.**Proviso.**Trial in the absence of def't.*

SEC. 5. If the defendant shall not appear at the time of trial,
 after giving bail as aforesaid, or after being served with a summons,
 as described in the third section of this act, and no sufficient reason
 be assigned to the justice, why he or she does not appear, then the
 justice shall proceed to hear and determine the cause, in the absence
 of said defendant, but shall not give judgment in favor of the plain-
 tiff, unless the said plaintiff shall fully prove his demand in the same
 manner as if the defendant had been present and denied the same.

Plaintiff not appearing, suit to be dismissed.

SEC. 6. If the plaintiff or his agent shall not appear at the time
 appointed for the trial aforesaid, and no sufficient reason shall be
 assigned to the justice why such plaintiff or his agent does not ap-
 pear, the justice shall dismiss the suit, and the plaintiff shall pay
 the costs unless the defendant shall consent, that such suit shall be
 continued to another day, in which case, the same proceedings
 shall take place at the second day, so fixed for the trial as above
 provided; but this section shall not require the dismissal of a suit
 on a note placed in the hands of a justice for collection.

Appearance of one defendant.

SEC. 7. If two or more persons shall be sued jointly, before
 any justice of the peace, and all of such defendants shall have had
 notice as aforesaid, by warrant or summons, the appearance of any
 one of the said defendants, at the time of trial, shall be sufficient
 to justify the said justice in proceeding as if all were present; and if
 none of said defendants shall appear after such notice, the justice
 shall, if the plaintiff's demand be established as aforesaid, proceed as
 in other cases of default; and in either of the aforesaid cases, the
 justice shall not divide the amount of the debt proved among the
 defendants, but shall give one entire judgment for the whole amount
 proved to be due against so many of the defendants jointly, as
 shall be proved to be jointly indebted to the plaintiff. But if it
 shall appear to the justice, that any two or more of the defendants
 are severally indebted to the plaintiff, upon separate and different
 debts, or causes of action, or upon several or different promises
 or contracts, such plaintiff shall not be allowed to prosecute his
 suit against such defendants jointly. When there are several joint

debtors and all cannot be served with process, the justice may ren-
 der judgment against such as are served with process.

SEC. 8. Previous to the commencement of any trial before a
 justice of the peace, either party may move to have such trial put
 off for a time not exceeding ten days, upon making proof, either
 upon his own oath, or that of a credible witness, that the said par-
 ty cannot safely proceed to trial, on account of the absence of a
 material witness, or on account of any other cause or disability,
 which would prevent him from obtaining justice at such trial; and
 if the justice be satisfied that the party so applying, cannot safely
 proceed to trial; and also that the party so applying has used due
 diligence to be ready at the time of trial first appointed, and that
 his not being ready, is not the effect of such party's own neglect
 or inattention; then the said justice shall order the trial of said
 cause to be deferred to another day and hour, within ten days, to
 be by him appointed; and the party praying such continuance,
 shall pay all the costs occasioned thereby: *Provided*, The justice
 may, at any time, continue any case without oath, if the parties
 consent, or if but one party be present and shall consent, or if he
 shall deem it essential to justice so to do, for any good cause
 shewn.

*Continuance.**Proviso.*

SEC. 9. When the parties shall appear and be ready for trial,
 the justice shall proceed to hear and examine their respective alle-
 gations and proofs, and shall thereon give judgment against the par-
 ty who shall be proved to be indebted to the other, for so much
 money in dollars and cents as shall appear to be due, with costs of
 suit; but if neither party shall appear to be indebted to the other,
 then the judgment shall be against the plaintiff for the costs of suit
 only; and if such judgment be rendered upon any note or bond,
 or for the balance due upon a settled account, the justice shall al-
 low interest from the time when the same became due, and include
 the same in the said judgment; and in all cases the judgment shall
 bear interest at the rate of six per cent. per annum until paid.

Trial and judgment.

SEC. 10. The justice shall endorse on the back of every sum-
 mons, or warrant, the sum demanded by the plaintiff, with the
 costs due thereon, and the defendant may pay the same to the con-
 stable in whose hands such process may be, who shall give a re-
 ceipt therefor, which shall exonerate the defendant from debt and
 costs.

Endorsement on process.

SEC. 11. All evidence before a justice of the peace shall be
 under oath, and by parol, except where it shall be necessary to
 exhibit the signature or hand writing of a party against him, and
 except such evidence as shall be taken by deposition, as hereinafter
 mentioned.

Evidence.

SEC. 12. No party to any suit before a justice shall be permit-
 ted to deny his or her signature to any written instrument upon
 which such suit shall be founded, or which shall be offered as a
 set-off, or acquittance for the debt demanded in such suit, unless
 the said denial be under the oath of the party so denying the signa-
 ture purporting to be his or her own.

Denial of writing to be under oath.

SEC. 13. If any witness, residing within the county wherein a
 suit shall be pending before a justice, shall be unable to attend on
 account of age, sickness, or other cause, it shall be lawful for the

Depositions.

justice before whom such suit shall be pending, or some other justice of the county, to take the deposition of such witness in writing; and the justice before whom the suit shall be pending, shall adjourn the trial, not more than six days for that purpose, and shall give both parties notice of the time and place of taking such deposition.

SEC. 14. If any witness, whose testimony shall be material in a suit pending before a justice, shall reside out of the county wherein such suit shall be pending, the party desiring it, may take his, her, or their deposition or depositions, before any justice of the peace in the county in which such witness or witnesses reside; and the depositions taken in conformity thereto may be given in evidence in said suit, if it shall be made to appear that the opposite party had reasonable notice of the time and place of taking such depositions.

Set-off.

SEC. 15. No defendant shall be permitted to introduce at the trial as a set-off, any note, bond, debt, or claim against the plaintiff, which such defendant shall have purchased after the commencement of the suit.

All claims to be tried in one action.

SEC. 16. In all suits which shall be commenced before a justice of the peace, each party shall bring forward all his or her demands against the other, which are of such a nature as to be consolidated, and which do not exceed one hundred dollars when consolidated into one action or defence; and on refusing or neglecting to do the same, shall forever be debarred from the privilege of suing for any such debt or demand.

SEC. 17. When either party shall require the attendance of a witness, in any suit pending before a justice, it shall be the duty of the justice to issue a subpoena in the following form, as nearly as the case will admit, viz:

STATE OF ILLINOIS, } The People of the State of Illinois, to
COUNTY. } A. B.

Subpena for witnesses.

You are hereby commanded to appear before me at _____ on the _____ day of _____ at _____ o'clock, then and there to testify the truth, in a matter in suit wherein C. D. is plaintiff, and E. F. defendant, and this you are not to omit under the penalty of the law. Given under my hand and seal this _____ day of _____ 182

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Which subpoena may be served by a constable, or any other person, by reading the same to the witness, but no mileage shall be allowed to the person serving the same.

Compensation to witnesses.

SEC. 18. Each witness so summoned, shall be entitled to fifty cents for attending on each trial, to be taxed with the other costs of suit, and paid when the debt and costs are collected; but if more than two witnesses shall be sworn in any case, to testify to one fact on the same side, the party requiring such extra witness shall be at the whole expense of procuring the same; but no such fee shall be taxed by the justice, unless claimed by the witness attending.

SEC. 19. If both parties agree to have a difference decided by a justice of the peace, without process, he shall enter the same on his docket, noting particularly such consent, and proceed as in other cases. *Trial without process.*

SEC. 20. In all cases the parties to a suit before a justice shall have the privilege of referring the difference between them to arbitrators, mutually chosen by them, who shall examine the matter in controversy, and make out their award thereon in writing, and deliver the same to the justice, who shall enter the said award on his docket, and give judgment according thereto. *Arbitration*

SEC. 21. At any time before judgment is given in any suit before a justice, either party may demand to have the cause tried by a jury, provided the matter in controversy exceed twenty dollars; whereupon, it shall be the duty of the justice to issue his writ, directed to any constable, commanding him to summon a jury of six men, or twelve, if a less number be objected to; and the said jury shall be empaneled as soon as may be, the justice adjourning the cause if necessary to any time, not exceeding three days, for that purpose. The jury, when empaneled, shall be sworn by the justice to try the case according to the evidence, and the justice shall enter judgment upon their verdict, according to the finding thereof. The following shall be the form of the writ for summoning the jurors, viz:

STATE OF ILLINOIS, }
COUNTY. }
The People of the State of Illinois, to any Constable of said County, Greeting: *Venue.*

We command you to summon _____ lawful men of your county to appear before me at _____ on the _____ day of _____ 182, who are not of kin to plaintiff, or to defendant, to make a jury between said parties, in a plea of _____ because as well the said plaintiff as the said defendant have put themselves upon the country for trial; and have you then there the names of the jury and this writ. Witness my hand and seal this _____ day of _____ 182 JOHN DOE, J. P.

SEC. 22. In all cases where a witness shall be duly served with a subpoena, and shall fail to attend at the trial, conformably thereto, and in all cases where a person shall be summoned as a juror, to try any cause before a justice of the peace, and shall fail to attend at the time and place appointed in such summons, the justice shall have power to issue an attachment, directed to any constable of the county, commanding him forthwith to bring before such justice the body of such juror or witness so failing to attend as aforesaid, to show cause why he should not be fined for such contempt; and on the appearance of such juror or witness on such attachment, it shall be lawful for the justice of the peace to fine him in any sum not less than one dollar, nor more than ten dollars, or wholly discharge him, if satisfactory excuse be made. *Attachment against witnesses and jurors.*

SEC. 23. If any juror, summoned as aforesaid, shall be interested in the event of the suit, or of kin to either party, or shall *Qualification of jurors.*

have expressed his opinion on the matter about to be tried, or shall, for any other cause, to be judged of by the justice, be considered as a partial or improper juror, in that case the justice shall discharge such juror; and when by such discharge, or the failure of any juror to attend, the jury shall not be complete, the justice shall direct the constable to summon as many persons as shall be required to complete such jury instantly, from among the by-standers, or other persons in his bailiwick, which summons shall be verbal; and the persons so summoned shall be bound to serve on such jury, and on refusal or failure to do so, may be attached and fined for contempt as aforesaid.

Fine for misbehaviour.

SEC. 24. Every person who shall appear before a justice of the peace, when acting as such, or who shall be present at any legal proceeding before a justice, shall demean himself in a decent, orderly, and respectful manner; and for failure to do so, such person shall be fined by the said justice for contempt, in any sum not more than five dollars.

Removal of trial from one justice to another.

SEC. 25. Previous to the commencement of any trial before a justice of the peace, the defendant, or his or her agent, may make oath that it is the belief of such deponent that the defendant cannot have an impartial trial before such justice; whereupon, it shall be the duty of the justice immediately to transmit all the papers and documents belonging to the suit, to the nearest justice of peace, who shall proceed as if the said suit had been instituted before him.

Execution to be stayed 20 days.

SEC. 26. No execution shall be issued by a justice of the peace, until after the expiration of twenty days from the date of the judgment, on which such execution is to be issued, unless the party applying for the same, or the agent of such party, shall make oath that he believes that the debt will be lost, unless execution be issued forthwith. If such oath be made, then the execution shall be issued immediately, and levied, but no sale of any property, under such execution shall take place within twenty days from the date of the judgment; nor shall the issuing of such execution deprive either party of the right to appeal.

Appeal.

Execution, how issued, &c.

SEC. 27. All executions issued by a justice of the peace shall be directed to any constable of the proper county, and made returnable to the justice issuing the same, within seventy days from the date; such executions shall be levied only on personal property, and shall be in the following form as nearly as may be, viz:

Form of Execution.

STATE OF ILLINOIS, }
COUNTY, }

The people of the State of Illinois, to any Constable of said County,
Greeting:

We command you that of the goods and chattels of A. B. in your county, you make the sum of _____ dollars and _____ cents debt, and _____ dollars and _____ cents cost, which C. D. lately recovered before me in a certain plea, against the said A. B. and

hereof make return to me within seventy days from this date.
Given under my hand and seal this _____ day of _____ 182

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SEC. 28. When it shall appear by the return of any execution issued as aforesaid, that the defendant has not personal property within the county, sufficient to satisfy the debt, and it is desired by the plaintiff to have execution issued to some other county in which it is alleged that the defendant has personal property, the justice shall issue execution, directed to any constable of the county, where such property shall be said to be, to which execution shall be attached an official certificate of the clerk of the circuit court of the county in which the same shall be issued, setting forth, under the seal of said court, that such justice so issuing, was at the time of issuing of said execution, a justice of the peace, in and for said county; and no constable shall be bound to execute any such process unless so authenticated.

Execution to issue to a foreign county.

SEC. 29. When it shall appear by the return of the execution first issued as aforesaid, that the defendant has not personal property sufficient to satisfy the debt and costs within the county, in which judgment was rendered, and it is desired by the plaintiff to have the same levied on real property, in that, or any other county, it shall be lawful for the justice to certify, to the clerk of the circuit court of the county in which such judgment was rendered, a transcript, which shall be filed by said clerk, and the judgment shall thenceforward have all the effect of a judgment of the said circuit court, and execution shall issue thereon, out of that court as in other cases.

How levied on real property.

SEC. 30. Appeals shall be granted from the judgments of justices of the peace, in all cases, provided the appeal be demanded, and security tendered, within twenty days after the rendering the judgment.

Appeals within 20 days.

SEC. 31. When either party shall desire to appeal from the judgment of a justice of the peace, such party shall receive from the justice a copy of the judgment from which he wishes to appeal, and shall produce the same to the clerk of the circuit court of the proper county; and the said party shall, within twenty days from the date of the said judgment, enter into bond in the office of said clerk, in a penal sum sufficient to cover said judgment and all costs, with security, to be approved by said clerk; which bond shall be conditioned to pay the debt and costs in case the judgment shall be affirmed on the trial of said appeal; and if, upon the trial of any appeal, the bond required to be given by this section, shall be adjudged informal, or otherwise insufficient, the party who executed such bond shall in no wise be prejudiced by reason of such informality or insufficiency: *Provided*, he will, in a reasonable time, to be fixed by the court, execute and file in said court a good and sufficient bond.

Mode of appealing.

SEC. 32. Upon the execution of such bond, the clerk shall issue a *supersedeas*, enjoining the justice and constable from proceeding any further in said suit, and suspending all proceedings in relation thereto, and shall issue a summons to the appellee to appear at the term of the court to which the appeal is returnable, noting therein the day when the same shall be set for trial; which sum-

Clerk to issue a supersedeas.

mons shall be executed ten days before the day of trial, as in other cases.

Appellee not appearing, causes shall be continued.
 SEC. 33. Upon the return of said summons, if it shall appear that the appellee is not found in the county, the court shall continue the case until the next term, and shall then proceed to try the case.

Justice and constable to stay proceedings.
 SEC. 34. So soon as the clerk shall issue a *supersedeas* as aforesaid, the justice who gave the judgment, and any constable in whose hands an execution or other process may be, in relation thereto, shall suspend all further proceedings thereon; and the said justice shall return all the papers and a transcript of the judgment he had given, to the clerk of said court, with a certificate under his hand, that the said transcript and papers contain a full and perfect statement of all the proceedings before him; and the said court shall hear and determine the said appeal in a summary way, without pleading in writing, according to the justice of the case.

Amendments in papers.
 SEC. 35. The circuit court shall at any time admit such amendments of the papers and proceedings, as may be necessary to a fair trial of the case upon its merits; and execution may issue on the judgment of said court, in the same manner as if the cause had been originally instituted in said court.

Certiorari.
 SEC. 36. The judges of the circuit and probate courts shall have power within their respective jurisdictions, and it shall be their duty, upon application, made as hereinafter mentioned, to grant writs of *certiorari* to remove causes from before justices of the peace, into the circuit court, who shall endorse an order for the same, upon the petition of the party praying such writ, and on producing the same to the clerk of the circuit court he shall issue said writ in conformity to the provisions of this act.

Petition therefor.
 SEC. 37. The petition, on application for writs of *certiorari*, shall set forth and shew upon the oath of the applicant that the judgment before the justice of the peace was not the result of negligence in the party praying such writ; that the judgment in his opinion is unjust and erroneous, setting forth wherein the injustice and error consist, and that it was not in the power of the party to take an appeal in the ordinary way, setting forth the particular circumstances which prevented him from so doing.

Limitation to writs of certiorari.
 SEC. 38. No writ of *certiorari* shall issue after the expiration of six months from the rendering of the judgment.

Bond on certiorari.
 SEC. 39. Before any writ of *certiorari* shall issue, the party applying therefor shall give bond, with security, in the same manner, and with the same conditions, and when the same shall be defective, may be perfected as bonds in cases of appeals from justices of the peace. The writ of *certiorari* shall require the justice to certify to the circuit court, a transcript of the judgment and other proceedings had before him; and in no case shall the justice be required to send up a minute or memorandum of the evidence given before him; but upon the return of said writ, such proceedings shall be had thereon, as in cases of appeals.

Reversal of judgment not to vitiate any sale.
 SEC. 40. If the judgment of the justice shall be reversed by the circuit court, in whole or in part, such reversal shall not vitiate any sale on execution, which shall have been effected before the issuing of the writ of *certiorari*; but in such cases, the circuit court

shall have power to assess the damages, which shall have accrued in consequence of such sale, and to cause judgment to be entered, or a deduction made therefor; and in all cases of a partial reversal of judgment, either in case of appeals or *certiorari*, the court shall have power to apportion the costs between the parties, according to justice.

Damages computed.
Costs.
 SEC. 41. The justice of the peace, constable, and other persons concerned, shall, as soon as the writ of *certiorari* shall be served, stay all further proceedings in that case, until the further order of the circuit court.

Say of proceedings before justices.
 SEC. 42. Every constable, before he shall enter upon the duties of his office, shall take the following oath: "I do swear, that I will faithfully discharge the duties of my office, as constable, within the county of _____ according to the best of my understanding and abilities, so help me God." Which oath shall be taken before the county commissioners' court, or before any justice of the peace of the proper county; and the justice or clerk administering said oath, shall make a certificate thereof, and cause the same to be filed in the office of the clerk of the said court.

Constable to take an oath.
 SEC. 43. Every constable, before he shall enter upon the duties of his office, shall execute and deliver to the clerk of the county commissioners' court, of the proper county, a bond to be approved by said clerk, with one or more good and sufficient freeholders as his securities, in the sum of five hundred dollars, conditioned that he will faithfully discharge the duties of his office of constable; and that he will justly and fairly account for, and pay over, all moneys that may come to his hands, under any process, or otherwise, by virtue of his office; the said bond shall be made payable to the county commissioners of the county in which such constable shall be appointed, and their successors, for the use of the people of the state of Illinois, and shall be held for the security and benefit of all suitors and other persons who may be interested in, or become injured by the official conduct of such constable.

and give bond
 SEC. 44. If any constable shall not, within thirty days after his election or appointment, take the oath, and give bond as aforesaid, the said constable shall not be permitted after that time to be so qualified, or to take his said office; but the said office shall be considered as vacant, and shall be filled accordingly.

within 30 days.
 SEC. 45. If any constable shall neglect or refuse to pay over, on demand, any money collected by him, to the plaintiff or his agent, the circuit court of the proper county, may, on motion of the party aggrieved, or his attorney, give judgment in favor of such aggrieved party, against such constable, for the amount of the money so by him retained, with twenty per cent. damages thereon, and costs; and execution shall forthwith issue thereon; and the same shall not be replevied: *Proceedings against constable for not paying over money.* *Provided*, that the said constable shall have ten days notice, previous to the making of said motion.

Damages against constable for misconduct.
 SEC. 46. If the demand or debt of any plaintiff shall be wholly or in part lost, by the neglect or refusal to act, of any constable, or if any special damage shall arise to any plaintiff or defendant by the misfeasance or nonfeasance of any constable, in the discharge of any official duty, the party aggrieved may have his action for damages in the circuit court, against such constable for the injury

so sustained ; and shall have judgment and execution, which shall not be replevied.

Remedy against constable and his securities.

SEC. 47. Upon the return of any execution issued against a constable, in conformity with either of the two preceding sections, or for any penalty imposed by law upon any constable, if it shall appear that the said execution, or any part thereof remains unsatisfied, it shall be lawful for the clerk of the circuit court, at the request of the party aggrieved, to issue summons in the nature of a *scire facias*, against the said constable and his securities, commanding them to appear at the next term of the said circuit court, to shew cause, if any they have, why judgment should not be given against them for the amount of the penalty of their said bond ; which summons shall be served ten days before the return day thereof ; and on the return of said summons, the court shall award judgment against the said constable and his securities, for the whole of the penalty of said bond : after judgment obtained as aforesaid, the court may, from time to time, award execution against the defendants for money withheld or embezzled by said constable ; or for penalties recovered of him ; or for the amount of any judgment rendered against him for any omission or breach of duty : *Provided*, that no execution shall issue as aforesaid, until after the defendants shall have five days' notice that such execution will be moved for. Said *scire facias* shall issue on a copy of said constable's bond, which shall be furnished by the clerk of the county commissioners' court, on demand, to the party aggrieved.

By scire facias.

Bonds to be in force five years. Old bonds not vacated by new ones.

SEC. 48. All bonds which shall be given by constables hereafter, shall remain in force until the expiration of five years after the term of service of the constable giving the same shall have been concluded : and where bonds shall be renewed in conformity with an act approved December 30, 1826, entitled " An act to provide for the appointment of justices of the peace and constables," the giving of a new bond by any constable, shall not satisfy or vacate any bond previously given by the same constable ; but each bond shall stand good in relation to all matters and things officially done or committed, or which ought to have been so done, within the year for which such bond shall have been given.

Constable to keep the peace.

SEC. 49. It shall be the duty of every constable, when any felony or breach of the peace shall be committed in his presence, forthwith to apprehend the person committing the same, and bring him before some justice of the peace, to be dealt with according to law : to suppress all riots and unlawful assemblies, and to keep the peace, and also to serve and execute all warrants, writs, precepts, and other process, to him lawfully directed ; and, generally, to do and perform all things appertaining to the office of constable within this state.

Palpable omission of duty.

SEC. 50. If any justice of the peace, or constable, shall fail, refuse, or neglect to perform any duty appertaining to his office, when required, or shall refuse to act as such justice or constable, when required, he shall be deemed guilty of a palpable omission of duty, and on conviction shall be punished accordingly.

Constable pro tem. in certain cases.

SEC. 51. Any justice of the peace may appoint a suitable person to act as constable in a criminal or other case, where there is a probability that a person charged with any indictable offence will

escape, or that goods and chattels will be removed, before application can be made to a qualified constable ; and the person so appointed, shall act as constable in that particular case, and no other ; and any temporary appointment so made as aforesaid, shall be made by a written endorsement, under the seal of the justice, deputing, on the back of the process, which the person receiving the same shall be deputed to execute.

SEC. 52. The personal property of every defendant in a judgment before a justice of the peace, shall be bound for the payment of such judgment, from the delivery of the execution to the constable, issued thereon ; and the real property of such defendant shall be bound as aforesaid, from the date of the filing of a transcript of the judgment in the clerk's office, as provided in this act.

Lien of judgments and executions.

SEC. 53. Every constable to whom an execution shall be delivered, shall endorse on the back of the same an exact memorandum of the day and hour when the same shall have come to his hands, and shall immediately proceed to levy the same ; endorsing also on the back of the execution the date of such levy, and making an exact inventory of the property on which the same shall have been levied, and shall appoint a day and hour for the sale of said property, giving ten days previous notice of such sale, by advertisement in writing, to be posted up at three of the most public places in the county ; and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest, and costs, to the highest bidder.

Constable to endorse the time of receiving execution. Levy of execution.

And notice of sale.

SEC. 54. Any constable shall be authorized to remove property levied on by him, when it shall be necessary for the safe keeping of the same : *Provided*, that if the defendant shall desire to retain the property so levied on, until the day of sale, it shall be lawful for the said constable to allow the defendant so to keep the same, if said defendant shall give bond to said constable, in double the amount of the execution, with good security, conditioned for the delivery of said property, to the same constable, at the time and place of sale to be named in said bond ; and if the said property shall not be delivered, as aforesaid, at the time and place of sale, the constable having the execution may proceed to levy the same, upon the same or any other property of the defendant, or upon the property of the security in such bond, and shall sell the same, giving two days public notice of such sale by advertisement, to be posted at one public place.

Forthcoming bond.

SEC. 55. When any person shall be appointed and qualified to act as a constable, it shall be the duty of the clerk of the county commissioners' court to notify the sheriff of the county of such appointment ; and the said sheriff shall keep a list of the constables within his county ; and it shall be the duty of each sheriff to summon four constables (if necessary) of his county, to attend at each term of the circuit court, giving them ten days notice, and taking them in rotation ; which constables, when so summoned, shall attend, and act under the sheriff as his deputies, during the sitting of such court ; and any constable failing to attend as aforesaid, or refusing to act as such deputy, may be fined by said court for contempt thereof.

Sheriff to be furnished with list of constables.

And may summon them to attend the circuit courts.

*Justices
may ad-
minister
all oaths*

*And affir-
mations.*

*Acts re-
pealed.*

SEC. 56. The justices of the peace within this state shall have power to administer all oaths required by law, and not particularly directed to be otherwise administered; and where any person who shall be required by law to take an oath, shall be conscientiously scrupulous against taking such oath in the usual form, such person may affirm; which affirmation shall have the force and effect of an oath.

SEC. 57. The following acts, viz: "An act providing for the appointment of constables," approved March 22, 1819: "An act regulating appeals from justices of the peace and further defining their duties," approved February 12, 1821: "An act supplemental to an act regulating appeals from justices of the peace, and further defining their duties," approved February 14, 1821: "An act to regulate and define the duties of justices of the peace and constables," approved February 18, 1823: "An act regulating the mode of proceeding on writs of *certiorari*," approved January 23, 1825: and so much of the 17th section of "An act concerning judgments and executions," approved January 17, 1825, and of "An act to regulate the taking of delivery bonds, and for other purposes," approved January 27, 1825, as relates to the duties of constables: and all acts and parts of acts coming within the spirit and meaning of this act, are hereby repealed. But no suits or rights pending, or arising out of any of said acts, shall be affected or impeded by this act. This act to take effect on the first day of June next.

APPROVED, Feb. 3, 1827.

*In force
Feb. 12,
1827.*

AN ACT supplemental to the act entitled "An act concerning Justices of the Peace and Constables," passed February 3d, 1827.

*Jurisdic-
tion of Jus-
tices in tres-
pass and
trover.*

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That justices of the peace shall have jurisdiction, in addition to the jurisdiction conferred on them by the act entitled "An act concerning justices of the peace and constables," passed February 3d, 1827, in all actions of trespass on personal property, and in all actions of trover and conversion, when the damages claimed in any of the above specified actions do not exceed twenty dollars.

APPROVED, February 12, 1827.

*In force 1st
May, 1827.*

AN ACT to extend the jurisdiction of Justices of the Peace.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That hereafter the justices of*

the peace of the several counties of this state shall have jurisdiction of all cases of assaults, and of assault and battery, and affrays: and upon the knowledge of any justice of the peace, or information of any person upon oath, (except the party offending,) shall issue his warrant to any constable of said county, for the arrest of such person as may be charged with either of said offences; and upon the arrest of such person, shall order the constable attending the trial, to summon six jurors of the neighborhood, not in any wise related to either of the parties, (unless the party accused shall dispense with such jury or require twelve, in which case twelve jurors shall be summoned,) which jury, when summoned, shall attend, and after being sworn, if they find the defendant guilty, shall assess the fine such defendant shall pay: *Provided*, the same shall not exceed one hundred dollars, nor be less than three dollars.

SEC. 2. That upon the jury returning their verdict of guilty, and the assessment of the fine, the justice shall record the same in his docket, or record book, and proceed to render judgment thereon for the amount of the said fine and costs; but if the jury return a verdict of not guilty, the justice shall record the same, and discharge the defendant or defendants without costs.

SEC. 3. That upon the rendition of such judgment, the justice shall immediately issue execution against the said defendant or defendants, for the amount of the fine and all costs; which said execution may be levied upon any personal property of said defendant or defendants, and the same shall be sold for whatever it will bring in cash, the constable giving twenty days public notice of the day of sale, by putting up written advertisements at three of the most public places in the county: *Provided, however*, That if the party convicted under this act have a family, then the constable shall reserve from execution one bed and bedding, one cow, and ten dollars worth of household and kitchen furniture.

SEC. 4. If the constable shall return upon such execution, that the defendant or defendants have no goods and chattels whereof to make the money, the justice shall issue a *capias* against the body of the defendant or defendants, and the constable shall arrest such person or persons, and commit him or them to the jail of the county, there to remain forty-eight hours; and if the fine exceed ten dollars, then to remain in said jail twenty-four hours for every five dollars over and above the said ten dollars, and so on in proportion to the amount of said fine.

SEC. 5. If any person, who shall be convicted under this act, shall wish to appeal to the circuit court, he shall signify the same to the justice of the peace who gave the judgment, and the justice shall give him a statement of the amount of the fine and costs, and upon producing the same to the clerk of the circuit court of the proper county, the clerk shall write a bond to the people of the State of Illinois, in a penalty double the amount of the fine, and a sufficiency to cover all costs, conditioned for the payment of the amount of whatever judgment the court may render against said defendant, which the said party appealing shall execute, with sufficient security, to be approved of by the said clerk; and when such bond shall be executed, the clerk shall notify the justice who tried the cause thereof, and the said justice shall stay all further proceedings,

*Jurisdic-
tion in case
of assault
and battery.*

Warrant.

Jury.

Verdict.

Fine.

Judgment.

Execution.

*Property
exempted.*

Ca. sa.

*Appeal,
and pro-
ceedings
therein.*

and return the papers to the next succeeding circuit court, when the same shall be tried, unless for good cause shown, the court shall continue it: *Provided*, all such appeals shall be prayed for, and the bond executed within five days after judgment rendered.

Judgment of circuit court.

SEC. 6. If the defendant shall be found guilty in the circuit court, (where the trial shall be by jury,) judgment shall be rendered against both principal and security in the appeal bond, for the amount of the fine assessed by the jury in said court, and all costs that may have accrued.

Appeal in behalf of the pe pte, and proceedings therein.

SEC. 7. If any person shall be dissatisfied with the verdict of the jury, given before any justice of the peace, because of the fine being too low, or because the defendant may have been acquitted, he shall be permitted to remove the said case into the circuit court, upon his executing bond to the people of the State of Illinois, before the clerk, (which bond the clerk shall write,) in a penalty sufficient to cover all costs that have or may accrue, conditioned for the payment of all costs, in case the defendant shall be acquitted, or the fine not increased; which bond shall be executed in ten days after the judgment of the justice shall have been given; and when said bond is executed, the clerk shall notify the justice thereof, and said justice shall return all the proceedings to the said court; and if the defendant shall be acquitted in the circuit court, or the fine not increased by the jury, the court shall render judgment against the party who removed the said case into the circuit court, and his security in the appeal bond, for all costs occasioned by the appeal: *Provided*, the party removing a case into the circuit court shall never be a witness against the defendant in the appeal in said court, upon the trial of such appeal.

Judgment of circuit court.

Party appealing not to be a witness.

Witnesses' names returned to circuit court.

SEC. 8. When the defendant appeals to the circuit court, it shall be the duty of the justice to return to the clerk, when he returns the papers, the names of all material witnesses who testified against the said defendant, and the clerk shall issue subpoenas for the same.

Summons and appearance.

SEC. 9. When the case is removed into the circuit court, as provided by the seventh section of this act, the party removing it shall cause a summons to be issued and served upon the defendant, notifying him of the appeal; and if the defendant cannot be found in the county, to serve said process upon, the case shall not be continued; but the court shall cause his appearance to be entered, and proceed to trial, as though the defendant were present, and had filed the plea of not guilty.

Exceptions to justice's papers not allowed. Duty of attorney general and circuit attorney. Confession of defendant.

SEC. 10. Upon the trial of appeals, no exception shall be allowed to any process which the justice may have issued, but all appeals shall be tried upon their merits. And it shall be the duty of the attorney general and circuit attorney of the proper county, to prosecute in all such cases of appeals without fee.

SEC. 11. If the person accused shall, upon his appearance before such justice, confess himself guilty of the charge against him, and dispense with the trial by jury, the justice shall hear the evidence, assess the fine, and render judgment thereon, and issue execution as before directed, subject to appeal, as before provided for: *Provided*, he shall not assess a higher fine than one hundred dollars, nor lower than three dollars.

SEC. 12. All the offences before described, which shall have

been committed before this act takes effect, shall be proceeded upon, tried, and punished according to the laws in existence at the time of their commission.

Offences committed before this act takes effect.

SEC. 13. No person shall be proceeded against for the commission of any of the offences herein enumerated, after the expiration of twelve months from the time the offence was committed, unless such offender shall withdraw himself from the county for the purpose of avoiding trial, in which case he shall be tried at any time within twelve months after his return or apprehension.

Limitations to prosecutions.

SEC. 14. The constable charged with the collection of any fine under this act, shall account for and pay over to the county commissioners' court, at every regular term thereof, all moneys which he may have collected under this act; and upon a failure to do so, he shall forfeit and pay double the amount of money so received, to be recovered in the name of the county commissioners of the proper county, for the use of the county, in any court having jurisdiction thereof. The constable shall also be authorized to receive all fines before execution issued, and shall account therefor, and pay over the same in the same manner, and under the same penalties as before provided.

Constable to pay over fines.

SEC. 15. And it shall be the duty of each of the justices of the several counties to return to the county commissioners' court, at each regular term thereof, a list of all fines before them assessed, stating the name or names of the defendant or defendants, and of the constable or constables charged with the collection of said fine or fines, to enable the said court to settle with the said constables; and a failure of any such justice, before whom any fine shall have been assessed under this act, to make such return, shall work a forfeiture of double the amount of the fines assessed before him, to be recovered as prescribed in the preceding section.

Justices to furnish a list of fines to commissioners' court.

SEC. 16. The county commissioners' court shall pay over to the county treasurers respectively, all moneys by them received as aforesaid, and take his receipt therefor; which receipt shall be deposited with the clerk of said court, and by him preserved: and the county treasurer shall account for said moneys in the same manner that he accounts for other public money by him received.

SEC. 17. That no charge for jurors' or witnesses' fees shall be allowed either before the justices or in the circuit courts.

No charge for jurors or witnesses.

SEC. 18. All laws and parts of laws coming within the purview of this act, be, and the same are hereby repealed. This act to take effect and be in force from and after the first day of May next.

Laws repealed.

APPROVED, December 29, 1826.

AN ACT to amend an act, entitled "An act to provide for the Election of Justices of the Peace and Constables," approved December 30, 1826.

In force Jan. 13, 1829.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That it shall be lawful for the

New districts may be formed.

Amended: Vule acts of 1835. county commissioners' court in the counties of this state, at any regular or special term to lay off in their several counties as many districts, not exceeding eight, for the election of justices of the peace and constables, as they shall deem necessary and proper.

Elections of justices and constables, and term of service. SEC. 2. When any district shall be so laid off, elections for justices of the peace and constables shall be held therein, in the same manner as is prescribed in the act to which this is a supplement; and the justices and constables elected in said districts, shall continue in office until the next quadrennial election of justices of the peace and constables, and until their successors shall be elected and qualified.

Vacancies. SEC. 3. When a vacancy shall happen in any district created in pursuance of this act, the same shall be filled in the manner prescribed in the fifth section of the act to which this is a supplement.

Alterations in districts. SEC. 4. The county commissioners' court, at any regular term, shall have power to alter the limits of the several districts in their respective counties, as the convenience of the county may require: *Provided*, no such alteration shall be made without petition from a majority of the qualified voters residing within the limits of the district proposed to be altered, and twenty days' public notice given of their intention to petition for such alteration.

With the consent of voters. SEC. 5. No alteration which shall be made in the districts shall prevent the justices of the peace or constables in office at the time of such alteration, from serving out the time for which they may have been elected.

Old justices to continue in office. SEC. 6. When any justice of the peace shall resign his office, or remove from the county or district in which he was elected, it shall be his duty to deliver over his docket and papers relating to the business transacted before him, to the nearest justice of the peace of his county, and to return to the office of the clerk of the county commissioners' court all copies of the statutes which he may have received from that office; and in case of the death of any justice of the peace, it shall be the duty of the person having possession of said docket, papers, and statutes, to deliver them over as aforesaid. And any person who shall refuse or neglect to comply with the requisition of this section, shall forfeit and pay a sum not exceeding fifty dollars, to the use of any person who may sue for the same in any court having cognizance thereof.

Justices, &c. resigning, to deliver his papers, &c. SEC. 7. It shall be lawful for the county commissioners' court, of any county of this state, when they may deem it necessary, to cause an election to be held of one additional justice of the peace, and two additional constables, in the district which includes the county seat; such justices of the peace and constables to hold their offices until the next quadrennial election of justices of the peace and constables, at which time an election shall take place in such district for four justices of the peace and four constables; and all vacancies in the office of constable shall be filled by appointments made by the county commissioners' court: *Provided*, That a majority of the qualified voters of the district may petition the county commissioners' court for that purpose.

APPROVED, January 13, 1829.

In force June 1, 1829. AN ACT to amend "An act concerning Justices of the Peace and Constables," approved, February 13, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That when any person or persons shall be about to commence an action of trespass or trover, before a justice of the peace, and he, she, or they shall make oath before such justice that he, she, or they verily believe that the benefit of whatever judgment may be recovered in such action, will be in danger of being lost, unless the defendant or defendants be held to bail; upon such oath being made, the justice shall issue a warrant, as in cases for debt, varying the same to suit the action, and the defendant may release his body by giving special bail, as in actions of debt. Upon all judgments in action of trespass or trover, the justice may issue an execution against the goods and chattels, or body of the defendant, at the election of the plaintiff. And in cases of judgment for debt, whenever the plaintiff or his authorized agent shall make oath before the justice, in whose office such judgment may be, that he or she verily believes the defendant or defendants to be able to pay such judgment, and withholds the money, or secretes his, her, or their property from the officer, so that the debt cannot be levied, it shall be lawful for the plaintiff to demand, and for the justice to issue execution against the body of such defendant or defendants. And that in all cases where a defendant shall give special bail under the provisions of this act, or the act to which this is an amendment, and shall not be surrendered on or before the return day of the *scire facias* upon the judgment, nor a sufficiency of property be found to pay the judgment and costs, within the time aforesaid, it shall be the duty of the justice of the peace, upon the application of the plaintiff, or his agent, to issue a summons against the special bail, in the following form, as nearly as may be, to wit:

STATE OF ILLINOIS, } *The People of the State of Illinois, to any* *Form of*
COUNTY, } *Constable of said county, Greeting:* *summons.*

You are hereby commanded to summon _____ to appear before me, at _____ on the _____ day of _____ at _____ o'clock, to show cause, if any he have, why judgment should not be rendered against him, as the special bail of _____ upon a *capias* issued by me, against him, in favor of _____ for the sum of _____ dollars and _____ cents, the amount of the judgment rendered against the said _____ in favor of the said _____ and hereof make due return, as the law directs. Given under my hand and seal, this _____ day of _____ 18 _____

JOHN DOE, J. P. [*Seal.*]

In which summons the justice shall specify a certain day, place, and hour for the trial, not less than ten, nor more than fifteen days from the date thereof, at which time and place the defendant is to appear; which process shall be served at least five days before the

What it shall contain. How served and returned.

Bail before J. P. in suits of trespass and trover.

Executions in trespass and trover.

Oath to procure a ca. sa.

Liability of bail.

Proceedings against special bail.

time of trial mentioned therein, by reading the same to the defendant or defendants.

Judgment by default.

SEC. 2. If the defendant or defendants shall not appear at the time of trial, after being served with a summons, as directed in the first section of this act, and no sufficient reason be assigned to the justice why he or she does not appear, then the justice shall render a judgment against the defendant or defendants, and issue execution thereon immediately.

And execution.

Appearance.

SEC. 3. If the defendant shall appear at the time and place appointed for trial, he shall be permitted to show cause for his failure to comply with the condition of his undertaking, or to show that he hath complied with the same; and if it shall appear that the defendant was prevented from surrendering the body of the original defendant, by the act of the plaintiff, or that the said original defendant had departed this life previous to the time required for making such surrender, or that his health was such as to endanger his life by such surrender, or that he had delivered the body in execution, according to the condition of the recognizance, then the bail shall be released and discharged from all liability.

What shall release the bail.

Appeal.

SEC. 4. Either party shall have the right to appeal to the circuit court from any judgment which may be rendered under the provisions of this act.

Evidence by the oath of parties.

SEC. 5. In all trials before justices of the peace, when either party may not have a witness or other legal testimony, to establish his or her demand, discount, or set off, the party claiming such demand, discount, or set off, may be permitted to prove the same by the testimony of the adverse party; and if such adverse party shall not appear at the time of trial, or shall refuse to be sworn, or to testify, then the party claiming the same shall be permitted to prove his or her demand, discount, or set off, by his or her own oath: *Provided*, that such party claiming the benefit of his own oath, or that of the adverse party, shall first make oath that he has a demand, discount, or set off, in said cause, and that he knows of no witness by whom he can prove the same, except by his own oath, or that of the adverse party: *Provided further*, that no person shall be allowed to prove his demand, discount, or set off, unless the adverse party be present, or shall have been notified thereof, and for which purpose the justice may continue the cause for such time as may be necessary.

See Act of July, 1837.

Evidence shall be the same in the circuit court on appeal.

SEC. 6. Upon the trial of appeals in the circuit court, the same rules of evidence shall be observed as in trials before justices of the peace.

Payment or tender to the constable releases from costs.

SEC. 7. That where the defendant, upon whom any summons or warrant issuing from a justice of the peace, shall be served, shall pay, or tender to the constable, the amount actually due, with all costs then accrued, and shall prove the same upon trial, and bring the money forward, and deposit it with the justice of the peace, no costs which shall thereafter accrue, shall be adjudged against him, but the plaintiff shall pay the same.

Non-residents shall give bond for costs.

SEC. 8. No person, who is not a resident of this state, shall hereafter commence any action before a justice of the peace, until such non-resident shall file with the justice before whom such

action may be brought, a bond, with sufficient security, for the payment of all costs which may be awarded against the plaintiff, should he fail in his suit; which bond shall be in the following form, as near as may be, inserting the names of the parties, the county and state:

“ State of Illinois, { A. B. }
 { vs. } Demand \$ ———
County of ——— { C. D. }

Form thereof.

I, E. F., do enter myself security for all costs that may accrue in the above case, this ——— day of ———, 18——.”

Which bond shall be signed by the security; and if the said plaintiff shall be cast in his suit, discontinue, or make default, and shall not, within ten days thereafter, pay to the justice all the costs that may have been occasioned to the defendant, to the justice and constable, jurors or witnesses, the justice shall issue his execution against the security for the amount thereof, accompanied with a bill of costs, in which shall be set down every particular charged. And if any suit shall be commenced by a non-resident, as aforesaid, without filing a bond for costs, as aforesaid, the suit shall be dismissed on the motion of the defendant, and the plaintiff shall be liable to pay all costs occasioned thereby, which may be recovered before any justice of the county, in the name of the party injured.

Liability of security.

Bill of costs.

Suit shall be dismissed for want of bond.

SEC. 9. In all cases, before justices of the peace, either party may have the case continued any reasonable time, not exceeding one month, for the purpose of taking the deposition of any non-resident witness; which deposition shall be taken in conformity to the manner of taking and returning depositions of non-resident witnesses in the circuit courts in this state.

Continuance.

Depositions.

SEC. 10. Justices of the peace shall not have jurisdiction where the defendant or defendants shall be sued as executor or administrator, where the sum or demand shall exceed twenty dollars; but in all cases where an executor or administrator shall be plaintiff, justices of the peace shall have jurisdiction, as in other cases.

Jurisdiction in case of administrator, &c.

SEC. 11. All summons shall be served by reading the same, as contemplated in the third section of the act to which this is an amendment, unless the defendant shall evade the service, and not listen to the same, or secrete himself; then the officer shall serve the same by leaving a copy at his place of residence with some white person of the age of ten years or upwards; and in all such cases, the constable shall make a special return when and how served, and the circumstances attending the same; and if the justice shall be satisfied that the defendant evaded the service by reading, and that the party is sufficiently notified and summoned, he shall proceed to hear and determine the case.

Manner of serving summons.

Special returns.

SEC. 12. Justices of the peace shall have original exclusive jurisdiction in all cases of assault, and assault and battery, and affrays, wherein the people are plaintiff, subject to an appeal to the circuit court, as provided by law. In all appeals to the circuit court, from the judgment of justices of the peace, in cases of assault, assault and battery, or affrays, the circuit court shall proceed to hear and determine the cause; and if the defendant pleads not guilty, the trial

Jurisdiction in case of assault and battery, &c.

Appeals in such cases.

Judgment and fine. shall be by jury, and said court shall give such judgment and assess such fine as shall be deemed just.

Prosecutor liable for costs. SEC. 13. In all criminal prosecutions before a justice of the peace, where the party accused shall be found not guilty, and it shall appear to the justice before whom such case shall be tried, that there was no reasonable ground for said prosecution, and that it was maliciously entered, that in such case, the justice of the peace is hereby authorized to give judgment against the complainant for the costs of said suit, and issue execution thereon.

Laws repealed. SEC. 14. The sixty-third section of the act relative to criminal jurisprudence, approved, January 30, 1827, be, and the same is hereby repealed.

SEC. 15. So much of the sixteenth section of the act passed on the 10th day of January, 1827, concerning costs, as permits the successful party, on appeals and *certiorari*, to recover only fifteen dollars of cost, be, and the same is hereby repealed.

This act to take effect on the first day of June next.

APPROVED, Jan. 23, 1829.

In force Jan. 7, 1831. AN ACT concerning Justices of the Peace and Constables, and concerning Coles County.

Justice to remain in office when boundaries of counties are altered. SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That no act of the present general assembly, nor any act which may hereafter be passed, forming a new county, or altering the boundaries of a county, shall be construed to affect in any manner the tenure of office of any justice of the peace or constable, but they may remain in office and continue to act as such in the new county or county to which they may be transferred, for and during the term of time for which they were severally elected, commissioned, &c., as if no such alteration had taken place.

Coles attached to fourth district. SEC. 2. The county of Coles is hereby attached to, and shall form a part of, the fourth judicial circuit for all judicial purposes.

APPROVED, January 7th, 1831.

In force March 1, 1833. AN ACT to amend the acts concerning Justices of the Peace and Constables.

Justices of the peace shall give bond. SEC. 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That every justice of the peace elected after the first day of July, one thousand eight hundred and thirty-five, before he shall enter upon the duties of his office, shall execute and deliver to the clerk of the county commissioners' court, of the proper county, within twenty days after his

said election, a bond, to be approved by said clerk, with one or more good and sufficient securities in the sum of not less than five hundred nor more than one thousand dollars; conditioned that he will justly and fairly account for and pay over all moneys that may come to his hands under any judgment or otherwise by virtue of his said office: and that he will well and truly perform all and every act and duty enjoined on him by the laws of this state, to the best of his skill and abilities. Said bond shall be made payable to the county commissioners of the county in which such justice of the peace shall be elected, and their successors in office, for the use of the people of the state of Illinois, and shall be held for the security and benefit of all suitors and others, who may be injured or aggrieved by the official acts or misconduct of such justice of the peace, which said bond shall remain in force, for the term of five years, after the expiration of his term of office.

SEC. 2. If any justice of the peace elected as aforesaid shall not, within twenty days after his election, give bond as aforesaid, said office shall be considered as vacant and shall be filled accordingly.

SEC. 3. Any person aggrieved by the failure of any justice of the peace to fulfil and comply with the condition of his said bond, may prosecute the said justice of the peace and his securities thereupon in the same manner that sheriffs are proceeded against, on their bonds.

SEC. 4. It shall be the duty of the clerks of the county commissioners' courts of the several counties in this state, upon the execution and filing bond as aforesaid, by any justice of the peace, to make out a certificate of the execution and filing thereof, under the seal of his office, and transmit the same to the governor of this state, who shall thereupon issue a commission to said justice of the peace.

SEC. 5. Justices of the peace who shall have given bond and received commissions under the provisions of this act, are authorized and empowered, and it is hereby made their duty to receive money on all notes and demands which may have been placed in their hands for suit or collection, and also upon all judgments rendered by them prior to the issuing execution thereon; and upon the failure of such justice, after demand made to pay over any money, by him collected or received as aforesaid, to any person entitled to receive the same, his or her agent or attorney, such person may proceed against such justice in a summary way, either before a circuit court or some other justice of the peace of the county in which such first mentioned justice may reside, by motion, upon giving to such justice five days notice of the application and recover the amount so neglected or refused to be paid, with twenty per cent. damages thereon, for such detention, and shall have execution therefor: *Provided*, that in all such cases, if the said justice shall pay or satisfy the amount claimed by the party prosecuting with costs, under the direction of the court or justice, before final judgment, all further proceedings therein shall be stayed.

SEC. 6. In all cases where a justice of the peace is required to issue a subpoena at the instance of either party to a suit, it shall be his duty to insert the names of four witnesses in each subpoena, if

the party demanding the same shall require the attendance of that number; and in no case shall a justice of the peace be permitted to charge and receive pay for any subpoena commanding the citation of a less number, where as many as four shall be required by the same party, at the same time, to be used in the same suit.

Shall not appear as counsellors in any appeal from his own judgment. Constable failing to pay over money.

SEC. 7. No justice of the peace shall be permitted to appear as counsellor for either party, on the trial of any appeal from any judgment which he may have rendered.

SEC. 8. If any constable shall neglect, fail, or refuse upon demand made, to pay over any money or moneys, by him collected, to the party entitled thereto, his or her agent or attorney, it shall be lawful for any person aggrieved thereby, or his attorney to commence an action against said constable and securities, by summons before the justice of the peace who issued the execution (or some other justice) upon which such money may be collected, and if upon the hearing of the case it shall appear to the justice of the peace, that money has been collected on such execution, and not paid over to the party entitled thereto, when demanded as aforesaid; and if it shall appear further, that the defendant or defendants sued with the said constable are his securities by the production of the original bond, or a certified copy thereof, of the constable under the hand and seal of the clerk of the county commissioners' court, the said justice shall render judgment against all the said defendants for the amount so received by said constable, belonging to the plaintiff, with ten per cent. damages thereon: *Provided*, that in actions aforesaid, the securities shall not be held liable, if on the trial aforesaid it is shown that the penalty of the bond has before the commencement of the suit, been paid by, or recovered of them: *And provided, further*, that either party may have the right to appeal as in other cases. The summons contemplated in this section shall be in the following form as near as may be, to wit:

Form of summons.

State of Illinois, }
 } sct.
 } county,

The people of the state of Illinois,

To any constable of said county greeting: You are hereby commanded to summon A. B., C. D., and E. F. to appear before me at on the day of next, to answer the complaint of G. H. for a failure of the said A. B. to pay to the said G. H. a certain sum of money not exceeding one hundred dollars, collected by the said A. B. as constable for the said G. H., and hereof make due return as the law directs. Given under my hand and seal, this day of A. D. 1833

J. D., J. P.

Execution may issue forthwith against any constable.

SEC. 9. Upon the rendition of the judgment aforesaid, execution upon application of the plaintiff shall issue forthwith against said constable only, which execution shall be made returnable in thirty days from the date thereof; and if upon return thereof it shall appear that the same is unsatisfied in whole or in part, an execution may issue against the goods and chattels of the defendant's securities for the whole of the said judgment and costs, or the part remaining unsatisfied, as in other cases.

SEC. 10. If a constable neglect or fail to return an execution within five days after the return day thereof, the party in whose

favor the same was issued, may maintain an action of debt against such constable, before the justice of the peace issuing the same, (or some other justice,) and shall recover thereon the amount of said execution with interest from the date of judgment upon which said execution was issued. If judgment be obtained against such constable, execution shall immediately issue thereon, returnable as in other cases: upon the return day of the execution, if it appear that the same is unsatisfied in full, or in part, a summons may be issued by the justice on the application of the plaintiff, or his agent against said constable, and his securities, as provided in the eighth section of this act, and execution may issue against said constable and his securities: *Provided*, that nothing in this act shall be so construed as to prevent any person from having his action in the circuit court as now provided for by law.

SEC. 11. In all cases of appeal from the judgments of a justice of the peace, to the circuit court, the cause shall be set for trial at the first term of the circuit court subsequent to such appeal; if the appellee shall not have been served with a summons, he may enter his appearance and proceed to trial and judgment: *Provided*, such appeal shall have been taken ten days before the sitting of the court.

SEC. 12. All acts and parts of acts coming within the spirit and meaning of this act, are hereby repealed.

APPROVED, March 1, 1833.

AN ACT to extend the jurisdiction of Justices of the Peace in certain cases.

In force March 2, 1833.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That justices of the peace in this state shall have jurisdiction in their respective counties, to hear and determine all civil suits for any debts and demands as described in the first section of an act entitled "An act concerning justices of the peace and constables," approved, February 3, 1827; although such debts or demands may have been originally over one hundred dollars, and reduced below that sum by fair credit: *Provided*, that nothing herein contained shall be construed so as to vest a justice of the peace with jurisdiction in any case, in which an executor or administrator shall be a party, where the sum demanded exceeds twenty dollars, except for debts due for property purchased at an executor or administrator's sale, where the debt claimed to be due shall not exceed one hundred dollars.

Justices may have jurisdiction where the demand is reduced by credits, although originally over one hundred dollars. Provided.

SEC. 2. That all laws and parts of laws coming within the purview of this act, be, and the same are hereby repealed.

Acts repealed.

This act to take effect from and after its passage.

APPROVED, March 2, 1833.

In force Jan. 7, 1835. AN ACT to amend an act, entitled "An act to provide for the Election of Justices of the Peace and Constables."

Additional Justices' Districts. SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the county commissioners' courts in the several counties of this state, be, and they are hereby authorized to increase the number of districts for the election of Justices of the Peace in their respective counties whenever they may deem the interest of the people require the same.

SEC. 2. The Justices elected in said districts, shall be elected in the manner, and be subject to the provisions contained in the act to which this is an amendment.

Part of Act repealed. SEC. 3. That so much of the act, to which this is an amendment, as limits the number of Justices' districts to eight in each county, be, and the same is hereby repealed.

APPROVED, Jan. 7, 1835.

In force Feb. 6, 1835. AN ACT to amend an act, entitled "An act to amend an act entitled an act to provide for the Election of Justices of the Peace and Constables," approved, January 7, 1835.

Constables to be elected in each justice's district. SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That when any new Justices' district may be laid out by the county commissioners' court of any county in this State, as provided for in the act to which this is an amendment, constables shall be elected in such new districts in the same manner that constables are now elected in Justices' districts.

SEC. 2. The constables elected in said districts, shall be subject to the provisions contained in the act contemplated in the second section of the act to which this is an amendment.

APPROVED, Feb. 6, 1835.

In force Feb. 13, 1835. AN ACT to extend the Jurisdiction of Justices of the Peace in certain cases therein named.

Officers refusing to pay over moneys, how proceeded against. SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That if any Sheriff, Coroner or other officer, shall fail, on demand made by the complainant, his executors, administrators or lawful attorney, to pay over any money collected by virtue of any execution, process or fee bill, not exceeding one hundred dollars, it shall be lawful for the party so aggrieved, or by his lawful attorney, to commence an action against

such Sheriff, Coroner or other officer, and his securities, by summons before any Justice of the Peace, and if upon hearing the case, it shall appear to such Justice of the Peace, that money has been collected upon such execution, process or fee bill, and not paid over to the party entitled to the same, on demand made as aforesaid; and if it shall appear further, that the defendant or defendants sued with the Sheriff or other officer, are his securities, by the production of the original bond or a certified copy thereof, of the Sheriff, Coroner or other officer, under the hand and seal of the Clerk of the county commissioners' court, the said Justice shall proceed to render judgment against said defendants for the amount so received by said Sheriff or other officer, belonging to the plaintiff, with ten per cent. interest thereon.

SEC. 2. And upon rendition of such judgment, execution, when application is made by the plaintiff, or his or her agent or attorney, shall issue forthwith against such Sheriff or other officer and his securities, as in other cases, subject, however, to be appealed by either party, under the same rules and regulations as is provided for in other cases of judgments of Justices of the Peace. All acts and parts of acts coming within the meaning and purview of this act, are hereby repealed.

APPROVED, Feb. 13, 1835.

AN ACT to provide for the election of Probate Justices of the Peace.

In force 4th March, 1837. SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That from and after the first Monday in August next, so much of an act entitled "An act relating to courts of probate," approved, January 2d, 1829, as relates to the establishment of courts of probate in the several counties in this State be, and the same is hereby repealed.

SEC. 2. An election shall be held on the first Monday in August next, also on the first Monday in August in the year of our Lord, 1839, and on the first Monday in August in every fourth year thereafter, for the purpose of electing one additional justice of the peace for each county, to be styled by way of eminence and distinction, the probate justice of the peace, of their respective counties. The said election shall, in all respects, be conducted and returns thereof so made in a manner provided or to be provided by law in the case of the election of justices of the peace. The said justices of the peace so to be elected under the provisions of this act shall hold and keep their offices at the county seats of their respective counties, and shall take the same oath in the same manner and give like bond and security as are required of other justices of the peace.

SEC. 3. Said probate justices of the peace are hereby vested with the same powers and jurisdiction in civil cases conferred by law upon other justices of the peace, and in the exercise of said

power and jurisdiction, the rules of law which now are or hereafter shall be applicable to ordinary justices of the peace, shall be applicable to the justices of the peace hereby created, and to all proceedings before them, growing out of such power and jurisdiction, and appeals may be taken and *certioris* issued and prosecuted in the manner provided in cases of appeals from justices of the peace.

Jurisdiction of.

SEC. 4. The said justices of the peace hereby created, shall also have jurisdiction of all cases of debt and *assumpsit*, express or implied, where executors or administrators shall be a party, plaintiff, or defendant, and when the amount on either side claimed to be due shall not exceed one thousand dollars.

SEC. 5. In addition to the judicial powers conferred in the preceding sections, the said probate justices of the peace shall have, possess, and exercise within their respective counties, the following ministerial powers, to wit :

Ministerial powers.

1st. Power to administer all oaths or affirmations concerning any matter or thing before them.

2nd. To issue and grant letters of administration, letters testamentary, and letters of guardianship, and repeal the same.

3d. To take probate of wills, and record the same.

Guardianship.

4th. To determine the person or persons entitled to letters of administration, or to letters testamentary, and in general, to do and perform all things concerning the granting of letters testamentary or of administration or of guardianship, which the judge of probate may do by the existing laws.

5th. To receive, file and record inventories, appraisement bills, and sale bills, as is required by the existing laws.

6th. To require executors, administrators, and guardians to exhibit and settle their accounts, and to settle for the estates and property in their hands, and for that purpose they may issue citations and attachments into every county in this State, to be executed by the sheriff of the said counties ; and

By sheriff of county.

7th. To do and perform all other acts of a ministerial character which the judges of probate are now authorized to perform in their respective counties.

SEC. 6. If it should become necessary to use copies of the proceedings had before such justices of the peace under the ministerial powers aforesaid, or any of them in any other state or territory, the parties interested therein may procure a transcript thereof, and on motion the same may be filed in the clerk's office of the circuit court, and shall be considered a matter of record in said court, and copies thereof may be certified as other records of said court are or may be.

To be filed in clerk's office.

SEC. 7. The said probate justices of the peace are hereby vested with all the judicial powers heretofore exercised by the judges of probate, but in all cases of the exercise of such judicial powers, the said justices of the peace shall report their proceedings therein to the next term of the circuit court of their respective counties on the first day thereof, for approval or rejection of such circuit court, and if such proceedings shall be approved by the circuit court, the same shall be considered as a matter of record in said court.

Powers vested in.

Shall report to circuit court.

To be approved by judge.

SEC. 8. The probate justices of the peace when acting as ordinary justices of the peace, shall be entitled to the fees allowed by law to justices of the peace for similar services, and when acting under the powers heretofore exercised by judges of probate they shall be allowed such fees as were allowed to judges of probate.

Entitled to fees.
Fees of judges of probate.

SEC. 9. So soon as the said probate justices of the peace shall be commissioned and qualified, it shall be the duty of the judges of probate to deliver over all the books, papers and documents, of every description whatever, belonging to their offices to the probate justices of the peace, elected for their respective counties.

Duty of judges of probate.

SEC. 10. An appeal shall be allowed from the proceedings of such probate justices of the peace in the exercise of their ministerial power aforesaid, in the same manner that appeals were taken and prosecuted from the proceedings of judges of probate.

Appeals allowed from.

APPROVED, 4th March, 1837.

AN ACT to amend an act to provide for the Election of Probate Justices of the Peace.

In force 21st July, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the second section of an act to provide for the election of probate justices of the peace, approved, March 4th, 1837, be so amended as to require the election of the said justices to be held in the several counties at the time and places where the elections for the clerks of the county commissioners courts are held under the provisions of the aforesaid act.

Second section of act amended.

APPROVED, 21st July, 1837.

AN ACT to amend an act, entitled An act to amend an act concerning Justices of the Peace and Constables, approved February 13th, 1827, approved January 23rd, 1829.

In force 21st July, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases before justices of the peace, where the plaintiff shall wish to prove his or her demand, by his or her own oath, or the oath of the adverse party according to the provisions of the 5th section of the act to which this is an amendment, it shall be lawful for the justice of the peace before whom the suit is commenced, to issue a summons as follows, to wit :

Power of justice.

STATE OF ILLINOIS, }
COUNTY. } SCT.

The people of the State of Illinois, To any Constable of said county, GREETING :

Of summons.

You are hereby commanded to summon C. D. to appear before me, at my office in _____ in said county, on the _____ day of _____ 183____, at the hour of _____ o'clock, A. M., to answer the complaint of A. B. for a failure to pay him a certain demand not exceeding one hundred dollars, and hereof make due return as the law directs. The said defendant is hereby also notified that the said plaintiff says that he has no witness by whom to prove his demand, except it be by his own oath, or the oath of the said defendant; and unless the said defendant appear at the trial of said complaint, the plaintiff will be permitted to prove his demand by his own oath, as by law is directed in such cases.

Given under my hand and seal at my office in _____ in said county this _____ day of _____ A. D. 183____

E. F. J. P. [L. s.]

If defendant does not appear or assign reason. And if the defendant or defendants shall not appear at the time of trial, after being served with such summons according to law, and no sufficient reason be assigned to the justice why he or she does not appear, then the plaintiff shall be permitted to prove his or her demand by his or her own oath, as is now provided by law, *Plaintiff may prove.* without giving any other or further notice to the defendant or defendants.

SEC. 2. Nothing here contained shall be construed so as to prevent any plaintiff or defendant, in any suit pending before a justice of the peace, from proceeding as is provided in the 5th section of the act to which this is an amendment. This act to take effect and be in force from and after its passage.

APPROVED, 21st July, 1837.

LAND.

AN ACT concerning occupying claimants of Land.

In force Feb. 23, 1810.

Persons convicted without notice of adverse title not liable for damages.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, and it is hereby enacted by the authority of the same, That all and every person, who may hereafter be evicted from any land for which he can show a plain, clear and connected title in law or equity, deduced from the record of some public office, without actual notice of an adverse title in like manner derived from record, shall be exempt and free from all and every species of action, writ, or prosecution for, or on account of any rents or profits, or damages, which shall have been done, accrued or incurred at any time prior to receipt of actual notice of the adverse claim, by which the eviction may be effected, provided such person obtained peaceable possession of the land.

Valuation of improvements.

SEC. 2. That the court, who shall pronounce and give judgment of eviction, either in law or equity, shall, at the time nominate seven fit persons, any five of whom shall have power, and it shall be their duty to go on the premises, and after viewing the same, on oath or affirmation, to assess the value of all such lasting and

valuable improvements which shall have been made thereon, prior to the receipt of such notice as aforesaid; and also, to assess all damages the land may have sustained by the commission of any kind of waste, or by deduction of soil by cultivation, or otherwise during the occupancy of the person evicted, and subtract the same from the estimated value of the said improvements, which assessment, signed and sealed by the persons making the same, shall be by them lodged with the clerk of the court wherein they were nominated, before the next ensuing term, or as soon thereafter as may be convenient; and at the next court, after such assessment, it shall be entered up as a judgment in favour of the person evicted, and against the successful claimant of the land by the clerk; upon which judgment execution shall immediately be issued by the clerk, if directed by the person evicted, unless the successful claimant shall give bond and security to be judged of by the court, to the person evicted, and to be taken at the time of entering up such judgment, conditioned to pay the same within twelve months from the date thereof, with five per cent. interest thereon: *Provided,* the balance shall ultimately be in favour of such occupying claimant, according to the directions and provisions of this act, which bond shall have the force of a judgment, and at the expiration of twelve months aforesaid, an execution shall be issued upon the same by the clerk of the court in which it was taken, at the request of the party entitled thereto, on oath being made that the same is yet due; should the balance be in favour of the successful claimant, judgment in like manner shall be entered up in his favour, against the other party, for the amount of the same, upon which execution may be issued as aforesaid, unless bond and security be given to such claimant, which may be acted upon in the manner before directed, and to declare what shall be the law between adverse claimants, under distinct titles of the kinds aforesaid after notice.

SEC. 3. That the persons nominated by the court as aforesaid, when making an assessment, shall carefully distinguish between such improvements, as were made on the land prior to notice, and those which were made after notice; and when making an assessment, they shall also take into consideration all such necessary and lasting improvements as shall have been made on the lands, after the receipt of such notice as aforesaid, and shall ascertain the amount of the value thereof, and they shall also take into consideration and ascertain the amount of the rent and profits arising from the whole of the improvements on the land from the time that notice of such adverse claim was received by such occupying claimant, and then after taking the amount of one from the other, the balance shall be added or subtracted from the amount of the value of the improvements which shall have been made before the receipt of the notice aforesaid, as the nature of the case shall require. *Improvements made before and after notice.*

SEC. 4. That the commissioners shall also estimate the value of the lands in dispute, exclusive of any improvements that shall have been made thereon, and make report of the amount of such valuation to the court, and if the value of the improvements shall exceed such estimated value of the land in dispute, in that case it shall and may be lawful for the proprietor of the better title, to transfer or convey, as the nature of the case may require, his better title to *Valuation of the land.*

the occupying claimant, and thereupon judgment shall be entered up in his favour against the occupying claimant, for such estimated value, upon which an execution may issue, unless the occupying claimant shall give bond and security to be approved of by the court, to pay the amount of such judgment, within one year after the person transferring or conveying as aforesaid, with interest from the date, which bond shall have the force of a judgment, and if not paid at the expiration of the year, an execution may issue, in the manner before directed by this act: *Provided*, that the proprietor of the better title shall, in every such case, at the time of entering up judgment in his favour, give bond and security to be approved of by the court, to the occupying claimant, to refund the amount of such judgment, in case the land so transferred or conveyed, shall ever thereafter be taken from him by any other prior or better claim.

Commissioners.

SEC. 5. That the persons nominated by the court, in virtue of this act, shall be called commissioners, and shall respectively take an oath or affirmation to do equal right to the parties in controversy; and shall also have power and authority to call witnesses, and administer the necessary oaths, and to examine them for the ascertainment of any fact material in the enquiry and assessment by this act directed.

Compensation of.

SEC. 6. That the said commissioners in making every estimate of value by virtue of this act, shall state separately the result of each, and the court shall have power to make such allowance to the said commissioners in any case, as shall seem just, which allowance shall be taxed and collected as costs: *Provided*, that this act shall not be extended to affect or impair the obligation of contracts, or to authorize the occupying claimant to be twice paid for his improvements; and in all cases where the occupying claimant is paid for his improvements by any other person than the proprietor of the better title, such person shall have the same redress as is allowed to the occupying claimant.

Arbitration and consent of parties.

SEC. 7. That the court shall have the same power to proceed by appointing commissioners to assess the value of improvements, and the damages by the commission of any kind of waste, by reduction of soil, by cultivation or otherwise, during the occupancy of the person evicted in case of arbitration, or by consent of the parties, on motion without suit.

Notice how given.

SEC. 8. That notice of any adverse claim or title to the land within the meaning of this act, shall have been given by bringing a suit, either in law or equity for the same, by the one or other of the parties, and may hereafter be given by bringing a suit as aforesaid, or by delivering an attested copy of the entry, survey, or patent, from which he derives his title or claim, or leaving any such copy with the party, his wife, or other free person above the age of sixteen years, on the plantation: *Provided, however*, that notice given by the delivery of an attested copy as aforesaid, shall be void, unless suit is brought within one year thereafter: *Provided*, that in no case shall the proprietor of the better title be obliged to pay to the occupying claimant for improvements made after notice, more than what is equal to the rents and profits aforesaid.

SEC. 9. That notice to any occupying claimant shall bind all

those claiming from, by, or through such occupying claimant to the extent of such claim. *Notice to occupying claimant effect of.*

SEC. 10. That nothing in this act shall be construed so as to prevent any court from issuing a precept to stay waste, and ruling the party to give bond and security in such manner as such court may think right. *Waste.*

This act shall be in force from and after the passage thereof.

APPROVED, Feb. 23, 1819.

AN ACT to enable persons to remove fences made by mistake on the lands of other persons. *In force Feb. 23, 1819.*

WHEREAS, in many parts of this State there is much prairie, and the lines run by the United States are not well known to the inhabitants, even who have bought the lands enclosed by said lines, and frequently the inhabitants have made their fences on the lands of other persons through mistake: Therefore, to remedy this grievance, *Preamble.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That when any person or persons may, by mistake, erect and make a fence or enclosure on the land of another person, then, and in that case, when the line or lines are legally run by the proper authority, and the fence and enclosures are known to be on the land of such other person, the person or persons making such fence or fences as aforesaid, through mistake, shall be empowered and authorized by this act to enter into the said land of another, doing as little damage as possible, and take away the rails, posts, wood, and stones of which said fence or fences are made and erected, within one year from the time said line or lines may be legally run. *Fences made by mistake may be removed.*

SEC. 2. *Be it further enacted*, That the owner or owners of any land whereon a fence or fences may have been made by mistake, shall not throw down, nor in any manner disturb the said fence or fences for one year from the time such mistake is found out. *Shall not be thrown down.*

SEC. 3. *And be it further enacted*, That when either the owner of the rails, or the owner of the land is desirous of having the line or lines run dividing such land, then, in that case, the person wishing such survey, shall give the other person notice in writing, ten days before such survey is made, of the time and place of making such survey. *Notice.*

SEC. 4. *Be it further enacted*, That this act shall take effect from its passage.

APPROVED, February 23, 1819.

In force Feb. 15, 1831. AN ACT to provide for the collection of demands growing out of contracts for sales of improvements on public lands.

Contracts for improvements on public land, valid. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That all contracts, promises, assumpsits, or undertakings, either written or verbal, which shall be made hereafter, in good faith and without fraud, collusion, or circumvention, for sale, purchase, or payment of improvements made on the lands owned by the government of the United States, shall be deemed valid in law or equity, and may be sued for and recovered as in other contracts.

APPROVED, Feb. 15, 1831.

In force Jan 4, 1831. AN ACT to amend an act, entitled "An act concerning landlords and tenants."

Landlord may seize for rent. SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That in all cases of distress for rent, it shall be lawful for the landlord by himself, his agent, or attorney, to seize for rent any personal property of his tenant that may be found in the county where such tenant shall reside; and in no case shall the property of any other person, although the same may be found on the premises, be liable to seizure for rent due from such tenant: *Provided*, that any crop or crops, growing or having grown on the premises, shall be liable for rent.

Tenants abandoning premises, grain &c. may be seized. SEC. 2. In case of the removal or abandonment of the premises, or any part thereof, by such tenant, all grain or vegetable, grown or growing upon any part of the premises so abandoned, may be seized by the landlord, his agent, or attorney, before the rent is due; and the landlord so distraining, shall cause the grain or vegetables so growing, to be properly cultivated until perfected, and in all cases husband such grain or vegetables, grown and growing, until the rent agreed upon shall become due, when it shall be lawful for such landlord, his agent or attorney, to sell and dispose of the same as in other cases of seizure, after the rent shall have become due, and also to retain a just compensation for his care, culture, and husbanding of such grain or vegetables: *Provided*, that such tenant may at any time redeem the property so taken before the rent is due, by tendering the rent agreed upon, and all reasonable expenses attending the same, for care, cultivation, and husbandry, as aforesaid, or replevy the same, as in case of seizure, where the rent is due.

This bill having remained with the council of revision ten days, Sundays excepted, and the general assembly being in session, it has become a law, this 4th day of January, 1831.

A. P. FIELD, Secretary of State.

LANDLORDS AND TENANTS.

AN ACT concerning Landlords and Tenants.

In force June 1, 1827.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That in all cases where rent may be due and in arrear, on a lease for life or lives, and where lands shall be held and occupied by any person without any special agreement for rent, it shall and may be lawful for the owner or owners of such lands, or his, her, or their executors or administrators, to sue for and recover such rent, or a fair and reasonable satisfaction for such use and occupation, by action of debt or assumpsit in any court having jurisdiction thereof.

Action of debt to recover rent.

SEC. 2. If any tenant or tenants for life, lives or for years, or any person or persons, who are, or shall come into possession of any lands, tenements, or hereditaments, by, from or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements or hereditaments, after the expiration of such term or terms, and after demand made, and notice in writing given, for the possession thereof, by his, her or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, such person or persons so holding over, shall for the time such landlord or rightful owner, be so kept out of possession, pay to the person or persons so kept out of possession, or their legal representatives at the rate of double the yearly value of the lands, tenements or hereditaments so detained, as aforesaid, to be recovered by action of debt or otherwise, in any court having cognizance of the same.

Tenants holding over.

SEC. 3. If any tenant or tenants, shall give notice of his, her or their intention to quit the premises, by him, her, or them holden, at a time mentioned in such notice, at which the tenant would have a right to quit by the lease, and shall not accordingly deliver up possession thereof; the said tenant or tenants, shall pay to the landlord or lessor, double the rent or sum which would otherwise have been due, to be collected in the same manner as the rent otherwise due should have been collected.

Tenants holding after giving notice.

SEC. 4. In all cases between landlord and tenant, where one half year's rent shall be in arrear, and unpaid, and the landlord or lessor, to whom such rent is due, has right by law to re-enter for non-payment thereof; such landlord or lessor, may, without any formal demand or re-entry, commence an action of ejectment for the recovery of the demised premises. And in case judgment be given for the plaintiff in such action of ejectment, and the writ of possession thereon be executed thereon, before the rent in arrear and costs of suit be paid; then the lease of such lands shall cease and be determined, unless such lessee or lessees, shall by writ of error reverse the said judgment, or shall by bill filed in chancery, within six months after the rendition of such judgment, obtain relief from the same: *Provided*, that any such tenant or tenants, may at any time before final judgment on said ejectment, pay or tender to the landlord or lessor of the premises, the amount of rent

Where half year's rent issued and unpaid lessor may bring ejectment.

in arrear and costs of suit, and the proceedings on such ejectment shall thereupon be discontinued.

Tenants to give notice to their landlords when sued.

SEC. 5. Every tenant, who shall at any time, be sued in ejectment by any person, other than his or her landlord, shall forthwith give notice thereof to his or her landlord, or to his or her agent or attorney, under the penalty of forfeiting two year's rent of the premises in question, or the value thereof, to be recovered by such landlord, by action of debt in any court having cognizance thereof.

Distress for rent how to proceed.

SEC. 6. When any goods or chattels shall be distrained for rent, and the tenant or owner of the goods so distrained, shall not within five days after such distress taken, and notice thereof, and the cause of taking, replevy the same, with sufficient security according to law; the person distraining or his agent duly authorized, may, with the sheriff or constable of the county, cause the goods and chattels so distrained, to be appraised, by two reputable freeholders, under oath; which oath may be administered by such sheriff or constable, to appraise said goods and chattels, according to their best judgment and understanding; the person making such distress on giving ten days notice, may sell such goods and chattels at public auction, and after retaining the amount of rent distrained for, and the costs of distress and sale, shall pay the overplus, if any there be, to such tenant or tenants.

Acts repealed.

SEC. 7. This act repeals an act, as to proceedings in ejectment, distress for rent, and tenants at will holding over, approved February 23, 1819; but rights acquired under that act are not hereby affected. This act shall take effect on the first day of June next.

APPROVED, Feb. 13, 1827.

LAND.

In force Feb. 27 1837.

AN ACT to define the extent of possession in cases of settlement on the public lands.

Actions of Trespass &c. may be maintained by settlers upon public land.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter in all actions of trespass, *quare clausum fregit*, trespass, and ejectment, and forcible entry and detainer, as well as forcible detainer, only where any person or persons may be settled on any of the public lands in this state, when the same have not been sold by the general government, his, her, or their possession shall, in the absence of paper title, be considered on the trial as extending to the number of acres embraced by the claim of such person or persons, according to the custom of the neighborhood in which such lands may be situated: *Provided*, That such claim shall not exceed in the whole three hundred and twenty acres: *Provided, further*, That where the lands have been surveyed, such claim shall not exceed one hundred and sixty acres, and be ascertained by land marks so

Proviso.

plainly made that the same may be designated from the other lands contiguous thereto in the same neighborhood of country: *And Provided further*, That such claim shall not be plead or set up in bar of any action, at any time commenced or to be commenced by a bona fide purchaser or purchasers of such lands from the United States, or person entitled to the right of pre-emption on the same, under any act of congress now in force, or hereafter to be in force.

This act to take effect from its passage.

APPROVED, February 27, 1837.

LAWS.

AN ACT concerning the revival of statutes.

In force Jan. 19, 1826.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases hereafter, where any laws or parts of laws, acts or parts of acts, now in force, or which may be hereafter enacted or in force in this state, shall be repealed by any subsequent act or acts of the general assembly, of this state, and such subsequent or repealing act or acts, shall be afterwards repealed by any other act or acts of the said general assembly, the said first mentioned laws or parts of laws, acts or parts of acts, which may at any time be repealed as aforesaid, shall not, on that account, be considered as revived: but all such laws or parts of laws, acts or parts of acts, as aforesaid, when once repealed, shall be null and void to all intents and purposes, and shall never after be considered as revived, unless there be express words to that effect, in such latter or repealing act or acts as aforesaid, any law, custom, or usage to the contrary notwithstanding.

Repeal of act not to revive former act.

This act to take effect from and after its passage.

APPROVED, January 19, 1826.

AN ACT authorizing the governor of this state to transmit the acts of the General Assembly of this state to the Executives of the several states and territories in the United States, and to the department of state of the United States.

In force Jan. 1, 1829.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the governor of this state, for the time being, so soon as the acts of the general assembly of this state, after each and every session thereof, shall have been published, to transmit, free of postage, to the executive of each state and territory of the United States, and

Gov. to transmit acts of the general assembly. Free of postage.

And request the like interchange from the other states.

to the secretary of state of the United States, three copies of the acts of the general assembly of Illinois, at such session, and request a like interchange by the several states : *Provided*, that where such request has heretofore been made, it shall not be the duty of the governor again to make it.

Expenses how paid.

SEC. 2. Any expense incurred by virtue of this act shall be paid out of the contingent fund, reserved in the state treasury, to be drawn by warrant from the auditor on the certificate of the governor, from time to time, as the case shall require.

Act repealed.

SEC. 3. The act entitled "An act authorizing the governor of the state of Illinois, to transmit the acts of the general assembly of this state, to the executives of the several states in the United States," approved, March 2, 1819, is hereby repealed.

APPROVED, January 1, 1819.

In force Jan. 14, 1929.

AN ACT regulating the publication and distribution of the laws and journals of the General Assembly.

2000 copies of laws to be published.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That there shall be published at the close of each session of the general assembly, an edition of two thousand copies of all the acts of a public and permanent nature, passed at such session, arranged under their proper heads, in alphabetical order, according to their subject matter. Prefixed to each volume there shall be a table of contents ; and at the end of the same, there shall be a full and complete index.

Arrangement of matter. Index.

Marginal notes, &c.

SEC. 2. Each edition of the laws, required by the preceding section to be published, shall be comprised in one octavo volume, with marginal notes, and the day on which each act takes effect, shall be stated in the margin, opposite the table, and the day on which the same was approved by the council of revision, or when it became a law, notwithstanding the objections thereof, shall be stated at the end of the act, omitting the name and style of the governor, and of the speakers of the two houses of the general assembly.

Secretary of state to superintend the printing Or appoint some person.

SEC. 3. The printing of the acts, required by this act, shall be superintended by the secretary of state, or some person appointed by him for that purpose, for whose superintendence he shall be responsible, and he shall cause all typographical errors to be corrected as far as he may discover the same.

250 copies to be reserved.

SEC. 4. The secretary of state, on the completion of the printing and binding of the acts of the present and any future general assembly of this state, shall reserve two hundred and fifty copies thereof in his office, subject to the disposition of any future general assembly. He shall cause to be delivered to the governor, lieutenant governor, auditor of public accounts, state treasurer, cashier of the state bank, each of the justices of the supreme court, attorney general, state's attorney, secretary of the senate, and clerk of

To whom the laws shall be distributed

the house of representatives, engrossing and enrolling clerks of each house, one copy each. He shall transmit by some person, or persons, with whom he may contract for the purpose, a sufficient number of copies to the clerk of the county commissioners' court of each county, to be distributed among the different civil officers of the county, and members of the general assembly residing therein, allowing one for each judge of probate, county commissioner, coroner, clerk of a court, county treasurer, sheriff, justice of the peace, county surveyor, constable, and member of the general assembly, residing in the county ; and there shall also be delivered to the clerk of the circuit court of each county, two copies for the use of the court, grand jury, and bar ; and the surplus copies, if any, shall be by said clerk of the county commissioners' court carefully kept and preserved, to be distributed as may be hereafter directed by law.

To county officers.

SEC. 5. The clerks of the several county commissioners' courts on receiving the laws for distribution, as aforesaid, shall give them receipts for the same ; which receipts shall be filed in the secretary's office by the person by whom the said laws were distributed, before he shall be entitled to payment for distributing the same.

Clerk to give receipts.

SEC. 6. The clerks of the several county commissioners' courts shall, upon the request of any person who may be entitled to a copy of the laws, as aforesaid, deliver to him such copy, taking his receipt for the same : but no person shall be entitled to more than one copy, although he may hold several offices.

And distribute in his county. One copy to each person.

SEC. 7. Upon the expiration of the term of service, resignation, or removal from office, of any county officer, it shall be his duty to return to the clerk of the county commissioners' court of his county, for the use of his successor in office, the copy, or copies, of the laws of this state, received by him in pursuance of this act : and in case of the death of any such officer, the said copy or copies of the laws shall be returned, as aforesaid, by his executors or administrators. If any such officer, his executors or administrators, shall refuse or neglect, for three months after the happening of such vacancy, as aforesaid, to return the said copy, or copies, of the laws to the clerk of the county commissioner's court, as aforesaid, it shall then be the duty of said clerk to sue for the same, before some justice of the peace, and he shall recover for the use of the county, the sum of four dollars for each copy so detained, with costs of suit. No person, however, while he continues to hold any office, which entitles its incumbent to a copy of the laws, shall be required to return his copy of the same, as aforesaid.

Copies when to be returned.

Penalty for not returning.

SEC. 8. There shall be added to each copy of the laws published in conformity to this act, an accurate account of the receipts and expenditures of the public moneys, for the two years preceding the session of the general assembly at which were passed the laws comprised in such copy. The volume hereby required to be published, shall also contain the title of every act, of a private or temporary nature, passed at such session.

Receipts and expenditures of public money to be published with the laws.

SEC. 9. On the fulfilment of any contract for printing, binding, folding, stitching, or distributing the laws of this state, the secretary of state shall certify the fact to the auditor of public accounts, who

Expenses of publication and

distribution, how paid. shall issue his warrant on the treasurer, for the sum due such person for such printing, binding, folding, stitching, or distributing.

Journals. SEC. 10. There shall be printed at the close of each session of the general assembly, five hundred copies of the journals of each house thereof, for the printing, folding, and stitching of which, the said general assembly shall contract; and they shall be distributed among the several counties, according to the number of white inhabitants, reserving in the office of the secretary of state, fifty copies. This act to be in force after its passage.

APPROVED, Jan. 14, 1827.

See "Public Printer."

AN ACT declaring what Laws are in force in this state.

In force Feb. 4, 1819.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, and it is hereby enacted by the authority of the same, That the common law of England, all statutes or acts of the British parliament made in aid of the common law, prior to the fourth year of the reign of king James the I., excepting the second section of the sixth chapter of XLIII. Elizabeth; the eighth chapter XIII. Elizabeth, and ninth chapter XXXVII. Henry VIII.; and which are of a general nature and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force, until repealed by legislative authority.

APPROVED, Feb. 4, 1819.

AN ACT to repeal certain Laws.

In force March 30, 1819.

Territorial laws repealed.

Proviso.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That all the laws and parts of laws, passed by or under the authority of any territorial government, heretofore existing, be, and the same are hereby repealed: *Provided, however,* That the several counties of this state, the boundaries and seats of justice shall be and remain as by law established: *And, provided,* That nothing in this act contained, shall be so construed as to repeal any law establishing a ferry or ferries, or so as to repeal any of the following acts, to wit: An act concerning the town of Shawneetown, approved, December the fifteenth, eighteen hundred and fourteen; an act to establish the name of the town now called Carthage, in the county of Monroe, Illinois territory, approved, December the twenty-first, one thousand eight hundred and sixteen; an act for the relief of Augustine Pencinneau, and Adalaide his wife, approved, December the twenty-sixth, one thousand eight hundred and sixteen; an act to

incorporate the president, directors, and company of the bank of Illinois, approved, December the twenty-eighth, one thousand eight hundred and sixteen; an act to incorporate the Wabash Navigation Company, approved, December the twenty-fourth, one thousand eight hundred and seventeen; an act to authorize Samuel Rogers to erect a mill dam upon and across the Kaskaskia river, approved, December the twenty-seventh, one thousand eight hundred and seventeen; an act to authorize a fishery upon the Kaskaskia river, approved, December the twenty-ninth, one thousand eight hundred and seventeen; an act to authorize William Morrison, of Kaskaskia, to build a floating bridge over the Kaskaskia river, in the county of Washington, approved, January the sixth, one thousand eight hundred and eighteen; an act declaring Big Muddy river a navigable stream, approved, January sixth, one thousand eight hundred and eighteen; an act to incorporate the town of Kaskaskia, approved, January sixth, one thousand eight hundred and eighteen; an act to incorporate the stockholders of the Illinois Navigation Company, approved, January nine, one thousand eight hundred and eighteen; an act to incorporate the bank of Edwardsville, approved, January the ninth, one thousand eight hundred and eighteen; an act to incorporate the city and bank of Cairo, approved, January the ninth, one thousand eight hundred and eighteen; an act to incorporate the president, directors, and company of the bank of Kaskaskia, approved, January the ninth, one thousand eight hundred and eighteen.

APPROVED, March 30, 1819.

AN ACT declaring what laws of a general nature shall be published with the acts of a general nature of this session.

In force March 2, 1833.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the following acts and parts of acts heretofore passed, shall be published with the laws of a general nature, which shall be passed at the present session of the general assembly.

Acts to be published

No. 1. An act establishing courts of county commissioners, except section 10, approved, March 22, 1819.

No. 2. An act regulating inclosures, approved, March 20, 1819.

No. 3. An act to regulate the inclosing and cultivating common fields, approved, Feb. 23, 1819.

No. 4. An act to enable persons to remove fences made by mistake on the lands of other persons, approved, Feb. 23, 1819.

No. 5. An act to establish inspections within this state, approved, March 23, 1819.

No. 6. An act declaring what laws are in force in this state, approved, Feb. 4, 1819.

No. 7. An act requiring certain official reports to be made to the general assembly, approved, Feb. 23, 1819.

No 8. An act to repeal certain laws, approved, March 30, 1819.

No. 9. An act respecting free negroes, mulattoes, servants, and slaves, except the 6th, 7th, 8th, and 9th sections of the same, approved, March 30, 1819.

No. 10. An act providing for the relief of securities in a summary way, in certain cases, approved, March 24, 1819.

No. 11. An act to license and regulate taverns, except section 7, approved, Feb. 27, 1819.

No. 12. An act to prevent trespassing by cutting timber, approved, Feb. 27, 1819, except the 6th section.

No. 13. An act regulating weights and measures, approved, March 22, 1819.

No. 14. An act concerning occupying claimants of land, approved, Feb. 23, 1819.

No. 15. An act to provide for all seals that may be necessary in the several official departments of the state of Illinois, approved, Feb. 19, 1819.

No. 16. An act regulating the interest of money, approved, March 2, 1819.

No. 17. An act concerning ancient books, papers, and records, approved, Jan. 30, 1821.

No. 18. An act concerning partitions and joint rights and obligations, approved, Jan. 13, 1821.

No. 19. An act prescribing the duties of coroners, approved, Jan. 20, 1821.

No. 20. An act to compel the payment of certain moneys into the several county treasuries, approved, Jan. 11, 1823.

No. 21. An act to incorporate such persons as may associate for the purpose of procuring and erecting public libraries in this state, approved, Jan. 31, 1823.

No. 22. An act to prevent the selling of spirituous liquors in this state, and for other purposes, approved, Feb. 14, 1823.

No. 23. An act requiring the several clerks of this state, to keep their respective offices at the county seat, approved, Jan. 11, 1823.

No. 24. An act regulating the estates of idiots, lunatics, and persons distracted, and for other purposes, approved, Feb. 12, 1823.

No. 25. An act declaring certain words actionable, approved, Dec. 27, 1822.

No. 26. An act authorizing courts of chancery to decree conveyances in certain cases, approved, Dec. 27, 1824.

No. 27. An act providing stationery and fire wood for the use of the general assembly, approved, Jan. 6, 1825.

No. 28. An act to prevent cattle from being injured in the vicinity of salines, approved, Dec. 14, 1824.

No. 29. An act concerning judgment and executions, approved, Jan. 17, 1825.

No. 30. An act providing for the establishment of free schools, approved, Jan. 15, 1825, except the proviso of the 2d section, and except sections fifteen, sixteen, seventeen, and eighteen of the said act.

No. 31. An act to regulate actions of account, approved, Jan. 11, 1827.

No. 32. An act relative to pleas in abatement of suit by the death of parties, approved, Dec. 30, 1826.

No. 33. An act concerning amendments and jeofails, approved, Jan. 11, 1827.

No. 34. An act concerning the publication of advertisements, approved, Dec. 28, 1826.

No. 35. An act requiring persons who petition the general assembly to give certain notices before such petitions are finally acted upon, approved, Dec. 26, 1826.

No. 36. An act respecting apprentices, approved, Dec. 30, 1826.

No. 37. An act regulating arbitrations and references, approved, Jan. 6, 1827.

No. 38. An act concerning special bail, approved, Jan. 26, 1827.

No. 39. An act to incorporate counties, approved, Jan. 3, 1827.

No. 40. An act concerning costs, approved, Jan. 10, 1827.

No. 41. An act amending the law concerning divorces, approved, Jan. 12, 1827.

No. 42. An act concerning divorces, approved, Jan. 31, 1827.

No. 43. An act regulating the mode of taking depositions, and to provide for the perpetuating of testimony, approved, Feb. 9, 1827.

No. 44. An act for the speedy assignment of dower, and partition of real estate, approved, Feb. 6, 1827.

No. 45. The first and second sections of an act to amend an act regulating elections, approved, Feb. 9, 1827.

No. 46. An act directing the mode of electing electors of president and vice-president of the United States, approved, Jan. 11, 1827.

No. 47. An act to regulate the apprehension of offenders, and for other purposes, approved, Jan. 6, 1827.

No. 48. An act to provide for the establishment of ferries, toll-bridges, and turnpike roads, approved, Feb. 12, 1827.

No. 49. An act supplemental to an act entitled an act to establish and regulate ferries, approved, Feb. 20, 1819, approved, Feb. 12, 1827.

No. 50. An act concerning forcible entry and detainer, approved, Feb. 2, 1827.

No. 51. An act for the prevention of frauds and perjuries, approved, Feb. 14, 1827.

No. 52. An act to restrain gaming, approved, Jan. 16, 1827.

No. 53. An act regulating the proceedings on writs of habeas corpus, approved, Jan. 22, 1827.

No. 54. An act to provide for the maintenance of illegitimate children, approved, Jan. 23, 1827.

No. 55. An act concerning jails and jailers, approved, Jan. 26, 1827.

No. 56. An act to provide for the election of justices of the

peace and constables, approved, Dec. 30, 1826, except the 7th and 12th sections.

No. 57. Act concerning justices of the peace and constables, approved, Feb. 3, 1827.

No. 58. An act supplemental to the act entitled, "An act concerning justices of the peace and constables," passed, Feb. 3, 1827, approved, Feb. 12, 1827.

No. 59. An act to extend the jurisdiction of justices of the peace, approved, Dec. 29, 1826.

No. 60. An act concerning landlords and tenants, approved, Feb. 13, 1827.

No. 61. An act prescribing the manner of authenticating acts of the general assembly, which may become laws notwithstanding the objections of the council of revision, approved, Dec. 26, 1826.

No. 62. An act concerning the revival of statutes, approved, Jan. 19, 1827.

No. 63. An act for the limitation of actions and for avoiding vexatious law suits, approved, Feb. 10, 1827.

No. 64. An act to regulate proceedings on writs of mandamus.

No. 65. And act concerning marriage, approved, Feb. 14, 1827.

No. 66. An act regulating mills and millers, approved, Feb. 9, 1827.

No. 67. An act concerning minors, orphans, and guardians, approved, Feb. 5, 1827.

No. 68. An act regulating the issuing of writs of ne exeat and injunctions, approved, Jan. 22, 1827.

No. 69. An act concerning oaths and affirmations, approved, Dec. 26, 1826.

No. 70. An act relative to promissory notes, due bills, and other instruments in writing, and making them assignable, approved, Jan. 3, 1827.

No. 71. An act concerning bills of exchange, approved, Dec. 28, 1826.

No. 72. An act concerning practice in courts of law, approved, Jan. 29, 1827.

No. 73. An act concerning practice, approved, Feb. 2, 1827.

No. 74. An act to provide for the preservation of the property of the state, approved, Feb. 15, 1827.

No. 75. An act to regulate proceedings upon informations in the nature of a quo warranto, approved, Dec. 28, 1826.

No. 76. An act to regulate the action of replevin, approved, Jan. 29, 1827.

No. 77. An act concerning public roads, became a law, Feb. 12, 1827, except sections 8 h, 11h, and 18 h of said act.

No. 78. An act prescribing the mode of trying the right of property, approved, Jan. 29, 1827.

No. 79. An act amending the act providing for the establishment of free schools, approved, Jan. 15, 1825, and for other purposes, approved, Feb. 17, 1827.

No. 80. An act concerning sheriffs and coroners, approved, Feb. 12, 1827.

No. 81. An act relating to the attorney general and state's attorneys, approved, Feb. 17, 1827.

No. 82. An act concerning conveyances of real property, approved, Jan. 31, 1827, except the 9.h section.

No. 83. An act concerning the action of detinue, approved, Jan. 6, 1827.

No. 84. An act concerning water-crafts found adrift, lost goods, and estray animals, approved, Jan. 31, 1827.

No. 85. An act declaring what shall be evidence in certain cases, approved, Jan. 10, 1827.

No. 86. An act regulating the salaries, fees, and compensation of the several officers and persons therein mentioned, approved, Feb. 19, 1827.

No. 87. An act concerning fugitives from justice, approved, Jan. 6, 1827.

No. 88. An act prescribing the mode of summoning grand and petit jurors, and defining their qualifications and duties, approved, Feb. 7, 1827.

No. 89. An act to provide for changing the venue in civil and criminal cases, approved, Jan. 23, 1827.

No. 90. An act for the relief of certain persons whose lands have been sold for taxes, approved, Feb. 13, 1827.

No. 91. An act to provide for taking the census or enumeration of the inhabitants of this state, approved, Jan. 13, 1829.

No. 92. An act to amend the act concerning the conveyance of real property, approved, Jan. 31, 1827, and for other purposes, approved, Jan. 22, 1829.

No. 93. An act to amend an act concerning courts of law, approved, Jan. 29, 1827, approved, Dec. 30, 1828.

No. 94. An act relating to courts of probate, approved, Jan. 2, 1829.

No. 95. An act regulating the supreme and circuit courts, approved, Jan. 19, 1829.

No. 96. An act establishing a circuit court north of the Illinois [river,] approved, Jan. 8, 1829.

No. 97. The first section of an act to provide for a suitable place for holding the supreme court, approved, Jan. 2, 1829.

No. 98. The 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9.h, 11th, and 12.h sections of the act entitled an act, supplemental to the act entitled an act regulating the supreme and circuit courts, approved, Jan. 19, 1829, approved, Jan. 23, 1829.

No. 99. An act authorizing and requiring the county commissioners' courts to cause court houses and jails to be erected in each and every county in this state, approved, Jan. 5, 1829.

No. 100. An act regulating elections, approved, Jan. 10, 1829.

No. 101. An act to amend an act entitled An act concerning water-crafts found adrift, lost goods, and estray animals, approved, Jan. 10, 1827, approved, Jan. 22, 1829.

No. 102. An act directing the mode of bringing suits by or against the state, approved, Jan. 3, 1829.

No. 103. The first section of an act to amend an act to provide for the establishment of ferries, toll bridges, and turnpike roads, approved, Feb. 12, 1827, approved, Jan. 22, 1829.

No. 104. An act establishing and regulating the inspection of tobacco in this state, approved, Jan. 12, 1829.

No. 105. An act regulating the appointment and duties of county surveyors, approved, Jan. 14, 1829.

No. 106. An act relative to wills and testaments, executors and administrators, and the settlement of estates, approved, Jan. 23, 1829.

No. 107. An act in addition to an act regulating the salaries, fees, and compensation of the several officers and persons therein mentioned, approved, Jan. 23, 1829.

No. 108. An act to amend an act entitled, An act to provide for the election of justices of the peace and constables, approved, Dec. 30, 1826, approved, Jan. 13, 1829.

No. 109. An act to amend an act concerning justices of the peace and constables, approved, Feb. 13, 1827, approved, Jan. 23, 1829.

No. 110. An act for improving the breed of horses, approved, Jan. 3, 1829.

No. 111. An act for the relief of insolvent debtors, approved, Jan. 12, 1829.

No. 112. An act authorizing the governor of this state to transmit the acts of the general assembly of this state to the executives of the several states and territories in the United States, and to the department of state of the United States, approved, Jan. 1, 1829.

No. 113. An act regulating the publication and distribution of the laws and journals of the general assembly, approved, Jan. 14, 1829.

No. 114. An act respecting free negroes, mulattoes, servants, and slaves, approved, Jan. 17, 1829.

No. 115. An act for the appointment of notaries public, approved, December 30, 1828.

No. 116. An act relative to the several officers therein named, approved, Jan. 22, 1829.

No. 117. An act relating to the office of recorder, approved, Jan. 8, 1829.

No. 118. An act to amend the act in relation to criminal jurisprudence, approved, Jan. 30, 1827, approved, Jan. 19, 1829.

No. 119. An act to prohibit shows of wax figures, tricks of jugglers, &c., approved, Jan. 23, 1829.

No. 120. An act to authorize clerks of the circuit and county commissioners' courts to appoint deputies in certain cases, approved, Feb. 9, 1831.

No. 121. An act supplemental to the several acts regulating the supreme and circuit courts of this state, approved, Feb. 16, 1831.

No. 122. An act to authorize additional poll books to be opened at the county seats of the several counties in this state, approved, Feb. 9, 1831.

No. 123. An act fixing the time of holding circuit courts in the counties of Madison and Calhoun, approved, Feb. 16, 1831.

No. 124. An act confirming grants of property made for the

encouragement of education and for other purposes, approved, Feb. 1, 1831.

No. 125. An act to lay out the state into districts for the purpose of electing representatives to the congress of the United States, approved, Feb. 15, 1831.

No. 126. An act to amend an act entitled an act regulating elections, approved, Jan. 7, 1831.

No. 127. An act to provide for the collection of the demands growing out of contracts for sales of improvements on public lands, approved, Feb. 15, 1831.

No. 128. An act further to secure the property of idiots, lunatics, and distracted persons, became a law, Jan. 19, 1831.

No. 129. An act to incorporate the inhabitants of such towns as may wish to be incorporated, approved, Feb. 12, 1831.

No. 130. An act concerning justices of the peace and constables, and concerning Coles county, approved, Jan. 7, 1831.

No. 131. An act to amend an act entitled an act concerning landlords and tenants, became a law, Jan. 4, 1831.

No. 132. An act requiring merchants, auctioneers, pedlers, and others engaged in the sale of goods, wares, and merchandize in this state, to procure a license for that purpose under the penalties therein prescribed, approved, Feb. 16, 1831.

No. 133. An act to amend an act concerning minors, orphans, and guardians, approved, Feb. 4, 1827, approved, Feb. 7, 1831.

No. 134. An act to amend an act entitled an act respecting free negroes and mulattoes, servants, and slaves, approved, Jan. 17, 1829, approved, Feb. 1, 1831.

No. 135. An act in addition to the act concerning oaths and affirmations, approved, Feb. 9, 1831.

No. 136. An act to amend an act entitled an act concerning practice in courts of law, approved, Jan. 29, 1827, approved, Feb. 9, 1831.

No. 137. The 2d, 3d, and 4th sections of the act providing a summary mode to recover public records, papers, and other public property illegally withheld, approved, Feb. 15, 1831.

No. 138. The 1st, 10th, 12th, 13th, 14th, 15th, and 17th sections of an act entitled an act to amend an act entitled an act relative to criminal jurisprudence, approved, Jan. 6, 1827, and to provide for the regulation and government of a penitentiary, approved, Feb. 15, 1831.

No. 139. An act concerning the state treasurer, approved, Jan. 10, 1831.

No. 140. An act defining and regulating the duties and term of service of the secretary of state, approved, Feb. 14, 1831.

No. 141. An act to amend an act entitled an act concerning sheriffs and coroners, approved, Feb. 12, 1827, approved, Feb. 7, 1831.

No. 142. An act to amend an act entitled an act concerning water-crafts adrift, lost goods, and stray animals, approved, Jan. 10, 1827, approved, Feb. 14, 1831.

No. 143. An act concerning sheriffs and coroners, approved, Jan. 7, 1831.

No. 144. The first section of an act regulating the office of clerk of the supreme court, approved, Feb. 15, 1831.

No. 145. An act to amend an act entitled an act relative to wills and testaments, executors, and administrators, and the settlement of estates, approved, Feb. 14, 1831.

No. 146. An act to provide for raising a revenue, approved, Feb. 19, 1827, except 3d, 4th, 5th, 14th, 20th, 27th, and 43d sections.

No. 147. The first section of an act for the relief of certain persons whose lands have been sold for taxes, approved, Feb. 13, 1827.

No. 148. An act supplemental to an act, entitled an act to provide for raising a revenue, approved, Jan. 19, 1829, except the 10th section of said act.

No. 149. An act to amend the several revenue laws of this state, approved, Feb. 12, 1831, except the 1st section of said act.

All acts heretofore passed of a general nature, and not enumerated in the foregoing section, hereby repealed. Proviso.

Sec. 2. All acts and parts of acts of a general and public nature, passed by any general assembly heretofore held, and not enumerated in the foregoing section, are hereby repealed: *Provided*, that no act or part of an act on the subject of, or having relation to, cashiers, appropriations, state boundary line, canal, counties, county lines, county seats, sheriff of Fayette county, school fund, school land, and sections numbered sixteen, college township, seminary, seminary land, Kaskaskia river, roads, rivers, salines, saline reserves, state bank and branches, bank debtors, state house, Vandalia, Vandalia lots, seat of government, apportionment of representatives and senators, bridges, internal improvements, rail roads, loans, acts for relief, state bank paper, funding state bank paper, reports of the supreme court, auditors' warrants; which said last mentioned acts and parts of acts shall be in no wise affected or impaired by this act, and no proceedings commenced or rights acquired under any of the acts hereby repealed, shall be in any wise impeded or impaired by the repeal thereof: the 3d, 11th, (except the words in the section "*Provided always*,") 12th, 13th, 16th, 21st, 22d, 24th, the 14th paragraph of the 28th section, beginning with the words "A writ of error," and the 43d section of the act entitled "An act regulating the practice in the supreme and circuit courts of this state, and for other purposes," approved, March 22, 1819.

Acts of a general nature passed at the session of the present general assembly, to be printed with the foregoing acts.

Sec. 3. All laws of a general and public nature passed at the present session of the general assembly shall be published and bound along with the above recited acts; the whole to be entitled the "Revised Laws of Illinois;" of which three thousand five hundred copies shall be printed, published, and distributed, agreeably to the provisions of "An act regulating the publication and distribution of the laws and journals," approved, January 14, 1829: *Provided*, that only two thousand copies of the said "revised laws" shall be distributed among the several officers and other persons entitled thereto: five hundred copies thereof shall be deposited in the office of the secretary of state, and one thousand copies of the said revised laws shall be sold in the manner following, viz: the secretary of state shall cause the said one thousand copies to be distributed, with the other laws, among the several counties of this

Secretary of state to distribute the same.

state, according to population, as ascertained by the census of eighteen hundred and thirty; they shall be delivered to the clerks of the county commissioners' courts of the counties respectively, who shall receipt for the same, and who shall deliver them over to the sheriff of the county, who shall receipt to such clerk, and the clerk shall transmit the sheriff's receipt to the office of the auditor of public accounts; and thereupon the sheriff shall be authorized to sell such copies, so received by him, for three dollars each; the said sheriffs annually, when they settle with the auditor for the revenues by them collected, shall also account for and pay into the state treasury all moneys by them received on account of any sale of such copies; and to that end they shall be required to produce to the auditor of public accounts a certificate of the clerk of the county commissioners' court, certifying the number of copies which shall then remain in the hands of such sheriffs to be sold.

Sec. 4. All private or local acts passed at the present general assembly shall be printed in a separate volume, to be called "Private Acts." Five hundred copies of said private acts shall be published, folded, and stitched only, in the manner prescribed in the act recited in the foregoing section, and shall be distributed as follows, to wit: one copy each to the judges of the supreme court, governor, lieutenant governor, judge of the 5th circuit, secretary of state, auditor of public accounts, state treasurer, each member of the general assembly, attorney general, state's attorney, judge of probate, county commissioner, and one copy to each clerk of the circuit and county commissioners' court; and to be distributed in the manner provided in the act recited in the foregoing section.

Private acts to be printed in a separate volume. How and to whom distributed.

APPROVED, March 2, 1833.

AN ACT relative to printing certain acts, and for other purposes.

In force Feb. 27, 1833.

Sec. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the secretary of state shall make out true copies of all the laws passed at the present session of the general assembly, of a private nature, laws concerning roads and ferries, toll-bridges and manufacturing companies, all laws which he may consider not of a general nature, and that ought not to be published in the large volume; and shall hand the same over to the individual who may be authorized to print the same, and he shall superintend the printing, and see that they are correctly printed; five hundred copies of the same in pamphlet form, without binding, and he shall retain a sufficient number in his office, and the remainder distribute to the counties, when the other laws shall be sent, to be by the clerk preserved in their respective offices, for the benefit of the county.

Private laws, secretary of state to make out copies of.

Superintend the printing.

Sec. 2. Should the time within which the commissioners

Com-
missioners of
roads.

appointed in the several acts relative to roads, passed at the present session of the general assembly, have elapsed before they shall have met and proceeded to the discharge of their several duties, as in such respective acts prescribed and required, they, or a majority of them, shall have power to agree upon the time and place, when and where they will meet and qualify, as required by the acts respectively, and proceed to the execution of the duties therein required.

APPROVED, February 27, 1833.

In force
Dec. 26,
1826.

AN ACT prescribing the manner of authenticating acts of the General Assembly, which may become laws, notwithstanding the objections of the Council of Revision.

Law re-
turned by
the council,
and re-
passed how
authenticat-
ed.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That whenever a bill which shall have passed both houses of the general assembly, shall be returned by the council of revision, with objections thereto, and upon reconsideration, shall pass both houses by the constitutional majority, it shall be authenticated as having become a law, by a certificate thereon, to the following effect: "This bill having been returned by the council of revision with objections thereto, and after reconsideration, having passed both houses by the constitutional majority, it has become a law, this—day of—," which being signed by the speakers of the senate and of the house of representatives, respectively, shall be deemed sufficient authentication thereof; whereupon the bill shall be presented to the governor, to be by him deposited with the laws in the office of the secretary of state.

Bills which
become
laws if
not re-
turned in
ten days,
&c.

SEC. 2. Every bill which shall have passed both houses of the general assembly, and shall not be returned by the council of revision within ten days, having thereby become a law, shall be authenticated by the governor, causing the fact to be certified thereon by the secretary of state, in the following form: "This bill having remained with the council of revision ten days, (Sunday excepted,) and the general assembly being in session, it has become a law this — day of —."

G. F., Secretary of State."

APPROVED, December 26, 1826.

AN ACT to authorize the Secretary of State to procure the binding of the unbound copies of the Laws of Congress, and the several States. In force
Feb. 22,
1833.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the secretary of state is hereby authorized to procure the binding of all the pamphlet or unbound copies of the laws of congress, and of the several states, which are or may hereafter be in his office: *Provided,* the expense thereof shall not exceed twelve and a half cents per copy. Secretary
of state to
procure the
binding of
certain
laws.

SEC. 2. The secretary of state shall certify to the governor, the amount due for such binding, who shall authorize the auditor to draw his warrant for the same, payable out of the contingent fund. Shall certi-
fy the price
of said
binding to
the gover-
nor.

APPROVED, February 22, 1833.

LICENSES.

AN ACT requiring merchants, auctioneers, pedlers, and others engaged in the sale of goods, wares, and merchandise, in this state, to procure a license for that purpose, under the penalties therein prescribed. In force
March 1,
1831.

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly,* That no merchant, auctioneer, pedler, or other person, or persons, company, or corporation, shall hereafter be permitted to vend, sell, or retail, either at public auction or private sale, any goods, wares, or merchandise, without first having obtained a license for that purpose, from the county commissioners' court of the proper county in which such goods, wares, or merchandise, may be offered for sale; for which he or they, at the granting thereof, shall pay into the county treasury, for the use of such county, such sum as shall be assessed by the said court, not less than five nor more than fifty dollars; which license when thus procured, shall authorize the applicant or applicants, to whom the same may be granted, to vend, sell, and retail goods, wares, and merchandise, in such county, for the term of one year from the time of granting the same; but no such license as aforesaid, shall authorize any person or persons, to vend, or peddle clocks in this state; but, in order to authorize any person to vend or peddle clocks, he shall procure a special license for that purpose, in the manner herein prescribed; and the county commissioners' court may grant licenses to venders and pedlers of clocks, for any term not less than three months, nor more than one year, which shall authorize such person or persons to vend and peddle clocks within the county, for the time specified in the license; but if the person applying for such license, shall not have resided within some county of this state, at least one year immediately preceding the time of applying for such license, he shall pay for the same a Merchants,
auctioneers,
pedlers,
&c. to ob-
tain license.

Clock ped-
lers to get
special li-
cense.

Amended -
See acts of
1835, under
the head of
"Pedlers."

sum not less than twenty-five, nor more than fifty dollars, for every quarter of a year for which the license is to last; and if the person applying as aforesaid, shall have resided in some county of this state one year immediately preceding the time of applying for such license, he shall pay for the same a sum not less than twelve dollars and fifty cents, nor more than twenty-five dollars for every quarter of a year for which such license is to last, to be assessed by the county commissioners' court, or their clerk, as in other cases, and the money to be paid into the county treasury; but any resident of this state may sell, without license, any articles not prohibited by law, except clocks, if such articles shall have been produced or manufactured within this state by the person selling the same: *Provided*, that this section shall not be construed to repeal or alter the provisions of the 127th section of the act relative to criminal jurisprudence, approved, January 6, 1827.

Domestic produce and manufacturers excepted.

Proviso.

SEC. 2. In all cases where the said court shall not be in session, when application is about to be made for a license as aforesaid, it shall be lawful for the clerk of such court to grant a written permission to such applicant or applicants, to vend, sell, and retail goods, wares, and merchandise, as aforesaid, until the end of the next term of the said court, to be holden after the granting of such permit, and for one year from the date thereof, if the said court at their said next term shall, upon examination and consideration, approve the same: *Provided*, such applicant or applicants shall first pay into the county treasury, for the use aforesaid, such sum as the said clerk in his discretion shall direct, in conformity with the rule prescribed in the first section, and as shall be usual in similar cases.

Clerk may grant permit in vacation.

SEC. 3. Where a permission is granted by the clerk in vacation as aforesaid, it shall be the duty of the court, at their next term thereafter, to examine such permit, and to proceed forthwith to assess the amount of the tax to be paid in such case, as in the case of an original application, and if the tax thus assessed shall correspond with the amount fixed by the clerk as aforesaid, they shall cause a license to be issued to the applicant or applicants for the term of one year, commencing from the date of the permit. If a greater sum shall be assessed than that fixed by the clerk, the applicant or applicants shall be forthwith required to pay over the residue to the county treasurer, under the penalty of forfeiting the amount already paid, and of having his or their permit revoked; but if a less sum shall be assessed, it shall be the duty of the court to order a warrant to be drawn on the treasurer in favor of such applicant or applicants for the overplus, payable out of any money in the county treasury, not otherwise appropriated.

Court to extend clerk's permit.

SEC. 4. If any person or persons, company or corporation, shall directly or indirectly keep a store, or shall sell or retail any goods, wares, or merchandise, (except as herein before excepted,) without being duly authorized, by a license or permit as aforesaid, such person or persons, company or corporation, so offending, shall forfeit and pay any sum not exceeding one hundred dollars, nor less than ten dollars, to be recovered by action of debt, in the name of the people of the state of Illinois, for the use of the proper county, before any justice of the peace or court of record,

Penalty for breach of this act.

having jurisdiction of the same. In all which cases it shall be the duty of the county commissioners, sheriffs, coroners, justices of the peace, constables, and clerks of the several courts in this state, and lawful for any other person or persons, in case of their neglect, to cause such offenders to be sued, and the suit or suits prosecuted to effect: and bail may be required in such cases without affidavit, if the court or justice, in their discretion, shall deem the same necessary to secure the county in the ultimate payment of any such penalty.

SEC. 5. So much of the 15th section of the act entitled "An act to provide for raising a revenue," approved, February 13, 1827, as authorizes the county commissioners' court to levy a tax on stock in trade; the act, entitled "An act to authorize non-resident pedlers to sell goods in this state," approved March 30, 1819, and the act, entitled "An act to amend an act, entitled an act to authorize non-resident pedlers to sell goods in this state," approved March 30, 1819, approved February 14, 1823, are hereby repealed. This act to take effect from and after the first day of March next.

Certain acts repealed.

APPROVED, Feb. 16, 1831.

AN ACT to amend an act, entitled, An act requiring merchants, auctioneers, pedlers, and others engaged in the sale of goods, wares, and merchandise, in this state, to procure a license for that purpose, under the penalties therein prescribed.

In force May 2, 1833.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the act entitled an act requiring merchants, auctioneers, pedlers, and others engaged in the sale of goods, wares, and merchandise, in this state, and compelling them to procure a license for that purpose under the penalties therein prescribed, approved, February 16, 1831, shall not be so construed, as to prevent any person or persons from vending, selling, or bartering any articles without procuring a license as is required by the act to which this is an amendment: Provided, The person or persons be not a merchant, auctioneer, grocer, or grocery keeper, or pedler, notwithstanding the article or articles so vended, sold, or bartered, may have been produced or manufactured in any other state, or out of this state. This act to take effect from and after the first day of May next.

Provisions of the act to which this is an amendment to whom extended.

APPROVED, March 2, 1833.

ing, and imprisonment, or any of them, shall be commenced within two years next after the cause of such actions shall have accrued, and not after.

Action on the case.

SEC. 3. That every action upon the case for words, shall be commenced within one year next after the words spoken, and not after; and every action for malicious prosecution, shall be commenced within two years next after the cause of action shall have accrued, and not after.

Of covenants or debt for rent, &c.

SEC. 4. That every action of debt or covenant for rent, or arrearages of rent, founded upon any lease under seal, and every action of debt or covenant, founded upon any single or penal bill, promissory note, or writing obligatory, for the direct payment of money, or the delivery of property, or the performance of covenants, or upon any award under the hands and seals of arbitrators, for the payment of money only, shall be commenced within sixteen years, after the cause of such action shall have accrued, and not after; but if any payment shall have been made on any such lease, single, or penal bill, promissory note, writing obligatory, or award, within or after the said period of sixteen years, then an action instituted on such lease, single, or penal bill, promissory note, writing obligatory, or award, within sixteen years after, such payment shall be good and effectual in law, and not after.

Judgments revived by scire facias.

SEC. 5. That judgment in any court of record in this state, may be revived by *scire facias*, or an action of debt may be brought thereon, within twenty years next after the date of such judgment, and not after.

Right of entry barred after 20 years.

SEC. 6. That no person who now hath, or hereafter may have any right of entry, into any lands, tenements, or hereditaments, shall make an entry therein, but within twenty years next after such right shall have accrued, and such person shall be barred from any entry afterwards.

Actions to be brought within 20 years.

SEC. 7. That every real possessory, ancestral, or mixed action, or writ of right, brought for the recovery of any lands, tenements, or hereditaments, shall be brought within twenty years next after

after his, her, or their return to this state, and the time of such person's absence shall not be accounted or taken as part of the time limited by this act.

SEC. 9. That if in any of the said actions, specified in any of the preceding sections of this act, judgment be given for the plaintiff, and the same be reversed by writ of error, or upon appeal, or if a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment be given against the plaintiff; or if the plaintiff be non-suited, then, if the time limited for bringing such action shall have expired during the pendency of such suit, the said plaintiff, his or her heirs, executors, or administrators, as the case shall require, may commence a new action within one year after such judgment reversed or given against the plaintiff, and not after.

Effect of reversal of judgment upon writ of error or appeal, &c.

SEC. 10. The eighth section of this act, entitled "An act regulating the practice in the supreme and circuit courts of this state, and for other purposes," approved, March 22, 1819: and the act entitled "An act of limitations, relating to lands and tenements," approved, February 18, 1823, be, and are hereby repealed: *Provided*, That the rights and defences which have accrued or arisen under the acts hereby repealed, shall not be affected or impaired by the passage of this act. *Provided, further*, that where the acts hereby repealed have commenced running, the time the same shall have run against any cause of action hereby limited, shall be computed part of the time limited, by this act. This act to take effect and be in force on the first day of June next.

Acts repealed. Proviso.

APPROVED, Feb. 10, 1827.

In force
Jan. 1,
1835.

AN ACT to amend "An act for the Limitation of Actions, and for avoiding Vexatious Law Suits," approved, 10th February, 1827.

Right of
entry
barr'd af-
ter seven
years.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter no person who now has, or hereafter may have any right of entry into any lands, tenements or hereditaments, of which any person may be possessed by actual residence thereon, having a connected title in law or equity, deducible of record from this State or the United States, or from any public officer or other person authorized by the laws of the State, to sell such lands for non-payment of taxes, or from any Sheriff, Marshal, or other person authorized to sell such land on execution, or under any order, judgment or decree of any court of record, shall make any entry therein, except within seven years from the time of such possession being taken; but when the possessor shall acquire such title after the time of taking such possession, the limitation shall begin to run from the time of acquiring title.

Actions to
be brought
within 7
years.

SEC. 2. That every real possessory, ancestral or mixed action or writ of right brought for the recovery of any lands, tenements, or hereditaments of which any person may be possessed by actual residence thereon, having a connected title in law or equity, deducible of record from this State or the United States, or from any public officer or other person authorized by the laws of the State, to sell such land for the non-payment of taxes, or from any Sheriff, Marshal, or other person authorized to sell such land on execution, or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid; but when the possessor shall acquire such title after taking such possession, the limitation shall begin to run from the time of acquiring title: *Provided,* That possession as aforesaid, to bar the rights, actions and suits aforesaid, shall have been continued in manner aforesaid, for the term of seven years next preceding the time of asserting the right of entry, or the commencement of any such suit or action: *And provided further,* That the heirs, devisees and assigns of the person having such possession and title, shall have the same benefit of this act, as the person from whom the possession was derived, could have had by virtue of such possession: *And provided also,* That in all the foregoing cases in this act mentioned, where the person who shall have right of entry, title or cause of action, is or shall be at the time possession is taken as aforesaid, under the age of twenty-one years, insane, imprisoned, feme covert, out of the limits of the United States, and in the employment of this State or the United States, such person may make such entry, or institute such action within the time herein limited, after the several disabilities herein enumerated shall cease to exist.

Proviso.

Further
provided.

This act to take effect on the first day of June next.

APPROVED, Jan. 17, 1835.

AN ACT to amend an act entitled "an act for the limitation of actions and for avoiding vexatious law suits." *In force*
Feb. 11,
1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the proviso to the seventh section of the act to which this is an amendment, shall not be held to extend to any non-resident, unless such non-resident be under the age of twenty-one years, insane or feme covert, and then and in that case the rights of such persons shall be saved for the time limited by the different sections of said act, after his or her becoming of full age, sane or feme sole. *Acts of*
1827 not to
extend to
non-resi-
dents un-
less they be
infants.

APPROVED, Feb. 11, 1837.

MARKS AND BRANDS.

AN ACT concerning Marks and Brands. *In force*
Feb. 6,
1835.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That so much of the act, approved, March the 23d, 1829, as relates to marks and brands, be, and the same is hereby revived, and shall be printed with the laws of the present General Assembly. *Act re-*
vived.

This act to be in force from and after its passage.

APPROVED, Feb. 6, 1835.

NOTE. The Act referred to in this act, seems to have no existence. It is not contained in the acts of 1829, published by authority; and it is supposed that the engrossing or enrolling clerk of the Legislature, committed an error in writing 1829, where he should have written 1819.

MANDAMUS.

AN ACT to regulate proceedings on writs of Mandamus. *In force*
June 1,
1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the respective circuit courts in this state shall have power to issue writs of mandamus. Appeals may be taken from the decision of the said courts, upon such terms as the said circuit courts shall prescribe; or writs of error may be prosecuted whenever the supreme court, or any of the judges thereof, in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing of such writ; and the said supreme court, or judge, in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error, as the said court or judge may *Circuit*
courts may
issue writs
of manda-
mus.

Appeals
may be
taken.

deem reasonable. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the circuit court until the determination of such writ of error.

Return to the first writ.
 SEC. 2. Where any writ of *mandamus* shall be issued out of any court of this state, directed and delivered to any person or persons, who, by the laws of this state, are required to make return of such writ, such person or persons shall make his or their return to the first writ of *mandamus*.

The return may be traversed.
 SEC. 3. When any writ of *mandamus* shall issue out of any court of this state, and return shall be made thereunto, it shall be lawful for the person or persons suing or prosecuting such writ, to plead to, or traverse all or any of the material facts contained in such return; to which the person or persons making such returns shall reply, take issue, or demur, and such further proceedings shall be had therein, and in such manner, for the determination thereof, as might have been had if the person or persons suing out such writ had brought his or their action on the case for a false return. If any issue shall be joined upon such proceedings, the person or persons suing such writ, shall and may try the same in such place, as an issue joined on such action on the case should or might have been tried. In case a verdict shall be found for the person or persons suing such writ, or judgment given for him or them upon a demurrer, or by *nihil dicit*, or for want of a replication, or other pleading, he or they shall recover his or their damages and costs, in such manner as he or they might have done in an action on the case as aforesaid; such damages and costs shall and may be levied by execution, as in other cases, and a peremptory writ of *mandamus* shall be granted without delay for him or them for whom judgment shall be given, as might have been if such return had been adjudged insufficient. In case judgment shall be given, for the person or persons making such return to such writ, he or they shall recover his or their costs of suit, to be levied in manner aforesaid.

And issue shall be joined.
Verdict or judgment.
Damages and costs.
Peremptory writ.

Recovery of damages a bar to action on the case.
 SEC. 4. If any damages shall be recovered by virtue of this act, against any person or persons making such returns to such writ as aforesaid, he or they shall not be liable to be sued in any other action or suit for the making of such return, any law, usage, or custom to the contrary notwithstanding.

Court may allow time to plead, &c.
 SEC. 5. It shall and may be lawful to and for the court issuing any writ of *mandamus*, to allow to such person or persons respectively, to whom such writ shall be directed, or to the person or persons who shall sue or prosecute the same, such convenient time, respectively, to make return, plead, reply, rejoin, or demur, as to the court shall seem just and reasonable, any thing herein contained to the contrary notwithstanding. This act to take effect on the first day of June next.

APPROVED, Jan. 6, 1827.

MARRIAGES.

AN ACT concerning Marriages.

In force
June 1,
1827.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That all male persons over the age of seventeen years, and females over the age of fourteen years, may contract and be joined in marriage: *Provided*, in all cases where either party is a minor, the consent of parents or guardians be first had, as is hereinafter required.

Who may contract marriage.
Consent of parents.

SEC. 2. All persons belonging to any religious society, church, or denomination, may celebrate their marriage according to the rules and principles of such religious society, church, or denomination; and a certificate of such marriage, signed by the regular minister, or if there be no minister, then by the clerk of such religious society, church, or denomination, registered as hereinafter directed, shall be evidence of such marriage.

Modes of celebrating marriage allowed.

SEC. 3. Any persons wishing to marry, or be joined in marriage, may go before any regular minister of the gospel, authorized to marry by the church or society to which he belongs, any justice of the supreme court, judge of any inferior court, or justice of the peace, and celebrate or declare their marriage, in such manner and form as shall be most agreeable. And such minister of the gospel, justice of the supreme court, judge, or justice of the peace, shall make a certificate of such marriage, and return the same, with the license, to the clerk of the county commissioners' court, who issued such license, within thirty days after solemnizing such marriage; and the clerk, after receiving such certificate, shall make a registry thereof, in a book to be kept by him for that purpose only; which registry shall contain the christian and sur-names of both the parties, the time of their marriage, and the name of the person certifying the same: and said clerk shall, at the same time, endorse on such certificate, that the same is registered, and the time when; which certificate shall be carefully filed and preserved, and the same, or a certified copy of the registry thereof, shall be evidence of the marriage of the parties.

Who authorized to perform marriage ceremony.

Certificate to be made.

Registry.
What it shall contain.

Evidence of marriage.

SEC. 4. No person shall be joined in marriage as aforesaid, unless their intention to marry shall have been published at least two weeks previous to such marriage, in the church or congregation to which the parties, or one of them, belong; or unless such persons have obtained a license, as herein provided.

Publication

SEC. 5. In all cases when publication of such intention to marry has not been made, as before described, the parties wishing to marry shall obtain a license from the clerk of the county commissioners' court of the county where such marriage is to take place; which license shall authorize any regular minister of the gospel, authorized to marry by the church or society to which he belongs, any justice of the supreme court, judge, or justice of the peace, to celebrate and certify such marriage; but no such license shall be granted for the marriage of any male under twenty-one years of age, or female under the age of eighteen years, without the consent of his or her father, or if he be dead or incapable, of his or her parents.

License.

Not to be granted minors without consent of parents.

mother or guardian, to be noted in such license. And if any clerk shall issue a license for the marriage of any such minor, without consent as aforesaid, he shall forfeit and pay the sum of three hundred dollars, to the use of such father, mother, or guardian, to be sued for and recovered in any court having cognizance thereof: and for the purpose of ascertaining the age of the parties, such clerk is hereby authorized to examine either party, or other witness, on oath.

Penalty for issuing without such consent.

Penalty for neglect to register certificate.

SEC. 6. If any clerk shall, for more than one month, refuse or neglect to register any marriage certificate which has been, or may hereafter be delivered to him for that purpose, (his fee therefor being paid,) he shall be liable to be removed from office, and shall moreover pay the sum of hundred dollars to the use of the party injured, to be recovered by action of debt in any court having cognizance of the same.

Penalty for not returning certificate.

SEC. 7. If any minister, justice of the supreme court, judge, or justice of the peace, having solemnized a marriage, or clerk of any religious society, as the case may be, shall not make return of a certificate of the same, as required, within the time limited, to the clerk of the commissioners' court of the county in which such marriage was solemnized, he shall forfeit and pay one hundred dollars for each case so neglected, to go to the use of the county, to be recovered by indictment. And if any minister of the gospel, justice of the supreme court, judge, or any other officer or person, except as herein before excepted, shall solemnize and join in marriage any couple without a license as aforesaid, he shall, for every such offence, forfeit and pay one hundred dollars to the use of the county, to be recovered by indictment.

Joining in marriage without license.

Act repealed.

The act entitled "An act regulating marriages," approved February 20, 1819, is hereby repealed; but rights acquired, and forfeitures incurred under that act, are not hereby affected. This act to take effect on the first day of June next.

APPROVED, February 14, 1827.

MECHANICS.

AN ACT for the benefit of Mechanics.

In force Feb. 22, 1833.

Persons furnishing labor or materials for building to have a lien on the same.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases, hereafter, where any contract shall be made between the proprietor or proprietors of any tract of land or town lot, on the one part, and any person or persons on the other part, for the erecting or repairing any house or other building, mill, or machinery of any description whatever, or their appurtenances, or for furnishing labor or materials for the purposes aforesaid, and every other person who may have furnished materials, which may have been used in the construction of such house, building, or mill, whether by special agreement or otherwise, the person or persons who shall, in pursuance of such

contract, have furnished labor or materials for such purpose, or who shall have furnished such materials as aforesaid, shall respectively have a *lien* to secure the payment of the same, upon such house or other building, mill, or machinery, and on the lot or tract of land on which the same shall be erected.

SEC. 2. When any person or persons shall wish to avail himself, herself, or themselves, of the benefit of such *lien*, he, she, or they shall commence his, her, or their action in any court having jurisdiction of the same, within three months from the time payment should have been made by virtue of any such contract, by which such *lien* shall be claimed: And if such suit be commenced in the circuit court, it shall be by bill or petition, describing, with common certainty, the tract of land, town lot, building, mill, or machinery, upon which said *lien* is intended to be made to operate, and also the nature of the contract, or indebtedness; which bill or petition shall be filed in the clerk's office of the proper county, and docketed by the clerk on the common law appearance docket. The courts trying such causes shall be governed by the same rules of evidence that are now observed in suits at law, and give judgment according to the justice and equity of the case.

Suit when to be commenced.

Shall be by filing bill or petition, if before circuit court

SEC. 3. The clerk of the court, where judgment has been had, under the provisions of this act, on application, shall issue a special execution, directed to the sheriff of the proper county, describing the property upon which said *lien* is made to operate, and out of which said judgment and costs are to be collected, or so much thereof as said property will bring: and no other property of the said defendant, in any suit as aforesaid, shall be bound for the payment of such judgment, unless the claimant hold collateral security for the payment of the same.

Clerk shall issue special execution.

SEC. 4. Any person or persons, wishing to avail himself, herself, or themselves of the benefit of the *lien*, under this act, by suit before a justice of the peace, shall, upon the commencement of such suit, file an account setting forth, with common certainty, the property upon which said *lien* is intended to be made to operate, and whether it is for work and labor done, or materials furnished; and upon the trial of said cause, the justice of the peace, trying the same, shall hear the proof, and if it shall appear that the defendant in such cause is indebted to the plaintiff, he shall give judgment for the amount so due, and, on application of the plaintiff, said justice of the peace shall give a transcript of the judgment, and certify the same to be for work and labor done, or materials furnished, (as the case may be,) and also a description of the property subject to such *lien*: which transcript and certificate shall be filed in the clerk's office of the county in which said judgment shall have been rendered, and when so filed, it shall have the same effect as a judgment of the circuit court, and execution shall issue in the same manner, and have the same effect as an execution issued upon a judgment rendered in the circuit court, under this act: *Provided,* That either of the parties in such suit, shall have the same right to appeal that is, or hereafter may be allowed from the judgment of justices of the peace in other cases.

Suit when commenced before a justice of the peace.

Proviso.

Sec. 5. All acts and parts of acts, coming within the purview of this act, are hereby repealed.

This act to take effect from and after its passage.

APPROVED, Feb. 22, 1833.

MILLS AND MILLERS.

AN ACT regulating Mills and Millers,

*In force
June 1,
1827.*

*When and
how a writ
of ad quod
damnum
may issue.*

*Notice of
application
to be given.*

*How such
writ shall
be directed
and served.*

*Jury to be
summoned.*

*Inquisition
and return
thereof.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That when any person owning lands on one side of any stream or water course, the bed of which wholly or in part belong to himself or herself, and may be desirous of building a water grist mill, or saw mill, on such lands, or to erect any dam across such water course for that purpose, and shall not own the lands on the opposite side of such stream or water course, such person, on application to the county commissioners' court of the county where the opposite lands may lie, may obtain a writ of *ad quod damnum* to be issued, directed, and proceeded on as is hereinafter directed. *Provided,* That notice in writing of such application be given four weeks before the said application, by personal service on the owner or owners of such lands, his, her, or their agents, if to be found in the county, and if not, then by affixing such notice on the court house door of the county.

SEC. 2. The said writ shall be directed to the sheriff of the county in which the lands to be affected thereby may lie, commanding him to summon twelve good and lawful men of his county, to meet upon the lands in such writ named, on a day therein to be specified; and ten days' notice of the execution of such writ shall be given by the sheriff, to the proprietor of such lands, as before directed in the case of notices, unless the party, his, her, or their agent, were present in court when such writ was obtained.

SEC. 3. The jury so summoned, when met, shall be sworn and charged by the sheriff, impartially and to the best of their skill and judgment to view the lands in the said writ described, and the lands above and below the proposed dam, and ascertain the damages, as by said writ directed, and shall locate and set apart, by metes and bounds, so much land as they shall think necessary for the purpose of erecting such dam, not exceeding three acres, having due regard in such location, to the interest of both parties, and shall appraise the same at its true value; also to examine the lands of other persons, which may probably be overflowed by the erection of such dam, and say what damage each owner will sustain thereby, and whether the dwelling house, out house, orchard, or garden of any such owner will be overflowed; and whether, in their opinion, the health of the neighborhood will be injuriously affected by such overflowing; which inquisition shall be made and signed by all the jurors, and returned, by the sheriff, with the writ, to the next term of the court whence it issued.

SEC. 4. When the inquest aforesaid shall be taken, the party obtaining the same shall notify the owner or owners of lands, mentioned in such inquisition, whose lands are to be affected by the same, to appear at the next county commissioners' court, and shew cause why leave should not be granted to build such mill and dam; which notice shall be served as before directed.

SEC. 5. Any person wishing to build such mill, and to dam any water course, who may own the land on both sides of such stream, shall make application as aforesaid to the court of the county where such mill is proposed to be erected, for a writ to examine as aforesaid, what lands may be thereby overflowed, and what damage will be sustained by the owner or owners of such lands; and whether the health of the neighborhood will be affected by such overflowing; which writ shall be issued, directed, and returned as before prescribed.

SEC. 6. If, on such inquest, or other evidence, it shall appear to the court that the dwelling house of any proprietor, or any out-house, garden, or orchard, will be overflowed, or the health of the neighborhood impaired, they shall not give leave to erect such dam; otherwise, if the said court shall judge it reasonable, and for the public benefit, they may give leave, and lay the party applying, under such regulations and restrictions, in respect to the navigation of such stream, as they shall judge proper.

SEC. 7. If the party applying, obtain leave to build the said dam, he shall, on paying to the proprietor or proprietors of the lands located, and the damages assessed by the jury as aforesaid, become seized, in fee, of the land so located, to him, his heirs, and assigns. But if he shall not, within one year thereafter, begin to build the said mill, and finish the same within three years, and afterwards keep it, in good repair for the accommodation of the public; or in case the said mill or dam be destroyed, shall not begin to rebuild in one year after its destruction, and finish it in three years, the said land shall revert to the former owner, and his heirs; unless at the time of such destruction the owner of such mill be an infant, or otherwise disabled in law; in which case the same term shall be allowed after such disability is removed.

SEC. 8. The inquest of the jury aforesaid, or the opinion of the court, shall not bar any prosecution or action, which would otherwise be maintained in law, had this act never been passed, other than for such injuries as were foreseen and estimated by the jury.

SEC. 9. Any person having obtained leave to erect any dam and mill as aforesaid, who shall neglect to finish the same, within the term before prescribed in this act, or having erected such mill, shall fail to keep it in repair and running, for the accommodation of the public, for the space of one year, at any one time, shall forfeit all rights acquired by virtue of this act, or any act of this state.

SEC. 10. All mills now in operation, or which may hereafter be put in operation in this state, for grinding wheat, rye, corn, or other grain, and which shall grind for toll, shall be deemed public mills.

SEC. 11. The owner or occupier of every public mill within

*Notice to
the owner
of the land.*

*Substance
of the writ.*

*When
leave shall
not be given.*

*Damages
assessed to
be paid.*

*Mill to be
completed
in three
years.*

*Inquest not
to bar a
prosecution.*

*Forfeitures
how
incurred.*

*What are
public
mills.*

Duty of millers. Their toll.

this state, shall grind the grain brought to his mill, as well as the nature and condition of his mill will permit, and in due turn as the same shall be brought, and may take for the toll, if a water mill or steam mill, for grinding and bolting wheat or rye, one eighth part : for grinding Indian corn, oats, barley, and buckwheat, not required to be bolted, one seventh part : for grinding malt, and chopping all kinds of grain, one eighth part : For an ox or a horse mill, for grinding and bolting wheat or rye into flour, one fourth part : for grinding all other grain, one fourth part, in full of all compensation : *Provided*, if the owner of any such grain, ground at an ox or horse mill, shall furnish team to grind the same, with the consent of the owner or occupier of such mill, the same toll shall be taken, as is allowed for a water or steam mill, and no more.

Further duty of millers.

SEC. 12. It shall be the duty of each and every owner and occupier of every public mill, to give due and punctual attendance when his mill shall not be out of repair, and to aid and assist in loading and unloading all grain which shall be brought to him to be ground. And he shall keep in his mill an accurate half bushel measure, and an accurate set of toll dishes. And for a failure to perform any of the duties required by this act, every occupier of a public mill shall forfeit and pay the sum of five dollars, to the use of any person who will sue for the same, in any court having cognizance thereof.

Penalties of failure.

SEC. 13. Every owner or occupier of a public mill as aforesaid, shall be accountable for the safe keeping of all grain received in his mill for the purpose of being ground, with the bags or casks containing the same ; and shall, when required, deliver the same, or the flour or meal thereof, to the owner, or his or her agent or servant, with the bags or casks in which the same was received : *Provided*, that such miller shall not be accountable for any bags or casks, unless the same be distinctly marked with the initial letters of the owner's name ; nor for the loss of grain, bags, or casks, which happen by unavoidable accident.

Millers' responsibility.

SEC. 14. If any miller, or the occupier of any mill, shall take a greater proportionate quantity of toll than is allowed by this act, or shall not sufficiently grind, or grind and bolt, (as the case may be,) agreeably to the capacity of his mill, and in due time, as the same may have been brought, all grain received into such mill for the purpose of being ground, or ground and bolted, as directed by the owner, every miller of a public mill, so offending, shall forfeit and pay the sum of five dollars, to the party injured, to be sued for and recovered as before provided for.

Penalty for taking too much toll.

SEC. 15. The " Act regulating grist mills and millers," approved March 25, 1819, is hereby repealed : but no right acquired, or liability incurred under said act, shall be affected by such repeal. This act to take effect and be in force, from and after the first day of June next.

Acts repealed.

APPROVED, Feb. 9, 1827.

* MINORS, ORPHANS, AND GUARDIANS.

AN ACT Concerning Minors, Orphans, and Guardians.

In force June 1, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the courts of probate, in their respective counties, shall admit orphans, minors, above the age of fourteen years, the father being dead, to make choice of guardians, and appoint guardians for such as are under the age of fourteen years, in all cases where such minor shall be possessed of, or entitled to real or personal estate.

Orphan minors may choose guardians.

SEC. 2. Whenever it shall be represented to said court, that any orphan minor, above the age of fourteen years, has not a guardian, it shall be the duty of said court to issue a notification to such minor, to appear before the said court, at a time therein specified, and choose a guardian ; and if such minor shall neglect or refuse to appear, or on appearing, shall neglect to choose a guardian, the said court shall appoint one for such minor, as if said minor were under the age of fourteen years.

Judges of probate may notify minor to appear.

SEC. 3. Where a minor having a father living shall be entitled to, or possessed of any estate, real or personal, not derived from his or her father, the said court of probate, shall notify the father to appear and shew cause, why a guardian for such minor should not be appointed ; if sufficient reason be not shewn, may appoint the father, if he be a proper person, if not, then such other person as the minor, if of the age of fourteen years, may choose ; if such minor shall refuse or neglect, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor. And when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

Father may be appointed guardian.

SEC. 4. If the father of a minor be insane, or incapable from want of understanding, to take care of, and provide for such minor, the court of probate shall appoint a guardian as though such father were dead ; such insanity or incapacity to be ascertained by inquest in the circuit court, as in other cases.

If father be insane.

SEC. 5. Guardians by virtue of their office as such, shall be allowed in all cases, to prosecute and defend for their ward.

Guardians to prosecute and defend for ward. Bond to be executed by guardian.

SEC. 6. The court of probate shall take, of each guardian appointed under this act, bond with good security, in a sum double the amount of the minor's estate, real and personal, conditioned as follows : " The condition of this obligation is such that if the above bound A. B. who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian according to law ; and shall render a fair and just account of his said guardianship to the court of probate for the county of ———, from time to time, as he shall be thereto required by said court, and comply with all the orders of said court lawfully made, relative to the goods, chattels, and moneys of such minor, and render and pay to such minor, all moneys, goods, and chattels, title papers, and effects, which may come to the hands or possession of such guar-

Condition.

dian, belonging to such minor, when such minor shall be thereto entitled, or to any subsequent guardian, should such court so direct; then this obligation shall be void, or otherwise to remain in full force and virtue;" which bond shall be taken to the people of the state of Illinois, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time, against all or any one or more of the obligors, in the name, and to the use and benefit of any person entitled, by a breach thereof, until the whole penalty shall be recovered thereon.

Judge of probate may call guardian to account.

SEC. 7. Courts of probate shall have power in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors from time to time, to render their respective accounts upon oath, touching their guardianship to said courts, for adjustment, and shall have power to compel such guardian to give supplementary security, whenever it shall judge proper, and in default thereof, to remove such guardian.

Power to remove guardian.

SEC. 8. The court of probate in all cases shall have power to remove guardians for good and sufficient reasons, which shall be entered on record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this act; and where any guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian, so removed, or the executors or administrators of a deceased guardian, to deliver up to such successor, all goods, chattels, moneys, title papers, or other effects, belonging to such minor, which may be in the possession of such guardian, so removed, or of the executors or administrators of a deceased guardian, or on any other person or persons who may have the same, and upon failure, to commit the party offending to prison, until he, she, or they, comply with the order of the court.

Power of guardian.

SEC. 9. Guardians shall have power to demand, sue for, and receive all moneys belonging to their wards from executors and administrators, as soon as the same may be collected; or of any other person or persons in whose hands or possession the same may be: and it shall moreover be their duty to put to interest the moneys of their wards upon mortgage security, to be approved of by the court; which letting shall always be for one year, and at the end of each year the interest shall be added to, and made part of the principal: and said guardians shall also have power to lease the real estate of the ward, upon such terms and for such length of time as the court of probate shall direct: *Provided*, such leasing shall never be for a longer time than during the minority of the ward; and the minority of females shall cease at the age of eighteen years.

Education of ward.

SEC. 10. The Guardian shall have power, under the direction of the court of probate, to superintend the education and nurture of the ward; and for that purpose, may pay out such portions of the ward's money as the court of probate shall from time to time by order direct: *Provided*, that the rents and profits arising from his real estate, and next the interest on the ward's money, shall

always be first resorted to for the education and nurture of the ward.

SEC. 11. The circuit court may, for just and reasonable cause, being satisfied that the guardian has faithfully applied all the personal estate, order the sale of the real estate of the ward, on the application of the guardian by petition in writing, stating the facts, and having given notice to all persons concerned, of such intended application, in some public newspaper printed in this state, or by setting up written notices in three of the most public places in the county, at least three weeks before the sitting of the court. Such order may enable the guardians to sell and convey the real estate for the support and education of the ward, or to invest the proceeds in other real estates. The court in such order shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit, and require such security of the guardian and purchaser as the interest of the ward may require. It shall be the duty of the guardian making such sale, as soon as may be, to make return of such proceedings to the court granting the order, which, if approved by the court, shall be recorded, and shall vest in the purchaser or purchasers all the interest the ward had in the estate so sold; application for the sale of such real estate shall be made in the county where the ward shall reside, although the estate may lie in a different county: but if the ward do not reside in this state, such application shall be made to the court of the county where the whole or a part of the estate shall be situated.

Sale of real estate.

Notice to be given.

SEC. 12. An account of all moneys received by any guardian for the sale of real estate of any minor, as aforesaid, shall be returned on oath by such guardian, to the court of probate of the county where letters of guardianship were obtained; and such moneys shall be accounted for, and shall be subject to the order of the court of probate in like manner as other moneys belonging to such minor.

Account of moneys to be kept and returned.

SEC. 13. Appeals shall be allowed in all cases from the order or judgment of the court of probate to the circuit court, the same in manner as is provided by an act relative to wills and testaments, executors and administrators, and the settlement of intestate's estates.

Appeals from judge of probate.

SEC. 14. Guardians, on final settlement, shall be allowed such fees and compensations for their services as shall seem reasonable and just to the judge of probate, not exceeding what are, or shall be allowed by law, to administrators.

Compensation of guardian.

SEC. 15. All laws and parts of laws heretofore enacted on the subject of appointing guardians to minors, and for the management of their estates, and every thing relating thereto, are hereby repealed; but no right acquired, or proceedings had, or which may be acquired or had before this act takes effect, under those laws, shall be impaired or set aside in consequence of the passage of this act; and all settlements in those cases shall be made agreeably to the requisitions and provisions of the same. This act to take effect and be in force on the first day of June next.

Laws repealed.

APPROVED, Feb. 5, 1827.

In force
Feb. 7,
1831.

AN ACT to amend an act concerning Minors, Orphans, and Guardians, approved, Feb. 4, 1827.

Guardians
shall edu-
cate wards.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all guardians shall hereafter educate their wards; and it is hereby made the duty of all civil county officers, to give information to the court of probate, of neglect or omission of any guardian to his or her ward: *Provided,* when there are not moneys sufficient to teach the ward to read and write, and the ground rules of arithmetic, and the guardian refuses and neglects to have them so educated, the court shall have power in put out to any other person the ward, for the purpose of having the same so educated. The judge of probate shall, in all cases, when information is made of the neglect of any guardian to educate his or her ward, and on the facts being established, remove such guardian, and appoint a suitable person to act as guardian and superintend the education of such minor orphan.

In cases of
omission to
educate by
guardian,
court shall
act.

Guardian
may be re-
moved.

Guardian
may loan
money of
his ward.

SEC. 2. Guardians shall have power to loan out the moneys of their ward at interest, in sums not exceeding one hundred dollars, on personal security, to be approved of by the judge of probate: *Provided,* it shall not be let for a longer time than twelve months without a renewal, and an approval of the security by the court; and if neglected longer, it shall be at the responsibility of the guardian. In all cases of any person being appointed guardian for more than one ward at one time, the judge of probate shall include all in one bond.

APPROVED, Feb. 7, 1831.

In force
March,
1837.

AN ACT to amend an act, entitled "an act concerning minors, orphans, and guardians."

Guardian
to be ap-
pointed.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter it shall be the duty of the judge of probate of any county in this state, to appoint a guardian for any minor or minors, in their respective counties, whether said minor or minors be entitled to any real estate or not.

Duty of
judge of
probate, or
co. com.
court.

SEC. 2. It shall be the duty of the judge of probate, or the county commissioners' courts of the several counties in this state, upon information being made to said judge or county commissioners' court of any minor or minors in said county, who has neither personal nor real property, or who has not been previously provided for by law, to direct the sheriff of said county to cause said minor or minors to be forthwith brought before said judge of probate or county commissioners' court, who shall proceed to examine into the situation of said minor or minors, and if upon examination, it shall appear to the satisfaction of said judge or court, that it will be better calculated to promote the general welfare of said minor or minors, to bind them out, then said judge or county

commissioners' court shall proceed to bind said minor or minors, agreeable to the provisions of an act, entitled an act for the relief of the poor: *Provided,* That nothing herein contained shall authorize the binding of any female over the age of fifteen years.

APPROVED, March 4, 1837.

MILITIA.

AN ACT for the Organization and Government of the Militia In force,
of this state. July 2,
1833.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all free white male inhabitants, resident in this state, who are or shall be of the age of eighteen and under the age of forty-five years, except as hereinafter excepted, shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company within whose bounds such citizen shall reside, within ten days after he shall be informed of such residence; and also those who may from time to time arrive at the age of eighteen, who shall reside in the bounds of his company; and shall without delay notify such person by an officer or non-commissioned officer of the company; and every such person so notified shall within six months thereafter provide himself with a good musket, fuzee or rifle, with proper accoutrements. The field officers, ranking as commissioned officers shall be armed with a sword, and pair of pistols, and the company officers with a sword; and every person so enrolled, and providing himself with arms and accoutrements, required as aforesaid, shall hold the same exempt from execution, distress, or for tax: *Provided,* no private shall be compelled to appear on parade with arms unless they actually have them.

All free
white citi-
zens of the
age of 18
and under
45, shall be
enrolled.

Shall pro-
vide them-
selves with
arms.
Arms of
field offi-
cers.

Arms to be
exempt
from exe-
cution.

SEC. 2. That the enrolled militia of this State shall be laid off into divisions, brigades, regiments, battalions, and companies. The counties of Clinton, St. Clair, Monroe, Randolph, Jackson, Johnson, Franklin, Jefferson, Washington, Perry, Union, Alexander, Pope, Gallatin and Hamilton, shall compose the first division: The counties of White, Wabash, Edwards, Wayne, Clay, Lawrence, Marion, Effingham, Jasper, Crawford, Coles, Clark and Edgar, shall compose the second division: The counties of Madison, Macoupin, Bond, Montgomery, Morgan and Green, shall compose the third division: The counties of Sangamon, Tazewell, McLean, Macon, Shelby, Fayette, Champaign and Vermilion, shall compose the fourth division: and the counties of Calhoun, Pike, Adams, Schuyler, McDonough, Hancock, Warren, Mercer, Fulton, Knox, Peoria, Henry, Putnam, Rock Island, Cook, La Salle and Jo Daviess, shall compose the fifth division. The counties of Clinton, St. Clair, Monroe and Ran-

Militia how
divided.

1st division

2d division.

3d division.

4th division

5th division

*Amended.

1st brigade
of 1st di-

vision.
2d brigade of 1st division.
3d brigade of 1st division.
4th brigade of 1st division.
1st brigade of 2d division.
2d brigade of 2d division.
3d brigade of 2d division.
1st brigade of 3d division.
2d brigade of 3d division.
3d brigade of 3d division.
1st brigade of 4th division.
2d brigade of 4th division.
1st brigade of 5th division.
2d brigade of 5th division.

dolph, shall compose the first brigade, of the first division : The counties of Johnson, Franklin, Washington and Jefferson, shall compose the second brigade, of the first division. The counties of Perry, Jackson, Union and Alexander, shall compose the third brigade, of the first division. The counties of Pope, Gallatin and Hamilton, shall compose the fourth brigade of the first division. The counties of White, Wayne, Marion, Clay and Edwards, shall compose the first brigade, of the second division. The counties of Wabash, Lawrence, Effingham, Jasper and Crawford, shall compose the second brigade, in the second division. The counties of Coles, Clark and Edgar, shall compose the third brigade, in the second division. The counties of Bond, Madison and Montgomery, shall compose the first brigade of the third division. The counties of Green and Macoupin, shall compose the second brigade in the third division. The county of Morgan, shall compose the third brigade in the third division. The counties of Sangamon and Tazewell, shall compose the first brigade of the fourth division. The counties of McLean, Macon, Shelby, Fayette, Champaign, and Vermilion, shall compose the second brigade of the fourth division. The counties of Calhoun, Adams, Schuyler, Pike, McDonough, and Hancock, shall compose the first brigade of the fifth division. The counties of Fulton, Peoria, Knox, Warren, Mercer, Rock Island, Jo Daviess, Henry, Putnam, La Salle and Cook, shall compose the second brigade of the fifth division.

How officered.

SEC. 3. That the militia of this State shall be officered as follows, to wit : To each division there shall be one Major General, who shall appoint one division Inspector, one division Quarter-master, to rank as Colonels of Infantry ; and two Aids-de-camp, to rank as Lieutenant Colonels. To each brigade, there shall be one Brigadier General, who shall appoint one Brigade Inspector, to act as Brigade Major ; one Quarter-master and one Aid-de-camp, to rank as Majors. The Aid-de-camp, to perform the duty of Brigade Judge Advocate. To each regiment there shall be one Colonel, one, two or three Majors, (as the case may be) the senior to be Lieutenant Colonel, with a regimental staff, to be appointed by the Colonel, to consist of one Adjutant, who shall act as Regimental Judge Advocate : one Quarter-master and one Paymaster, to rank as Captains, respectively : One Surgeon and Surgeon's mate, one Sergeant Major, one Quarter-master-Sergeant, one drum Major, and one fife Major. To each odd battalion, not forming a part of a regiment, one Major, with the staff of a regiment, to be appointed by the Major. To each company there shall be one Captain, one first and one second Lieutenant, four Sergeants, four Corporals, one drummer and fifer ; the said Sergeants and corporals, to be appointed by the Captains, respectively, and to hold their appointments by certificate.

Staff of Com-in-Chief.

SEC. 4. That there shall be one Adjutant General, Quarter-master-General and Pay-master-General, to be appointed by the Commander-in-Chief, to rank respectively as Colonels of Cavalry : and the Commander-in-Chief, is also authorized to appoint two Aids-de-camp, with the same rank, to continue in service until the expiration of his term of service as Governor.

Rank to be determined

SEC. 5. That each division, brigade, regiment, battalion and

company, when in the field, shall take rank agreeably to the date of the commission of the officer commanding the same : each division shall consist of not less than two, nor more than six brigades : each brigade of not less than three nor more than six regiments : each regiment of not less than two nor more than three battalions : each battalion of not less than three nor more than six companies : each company shall consist of not less than thirty-two nor more than ninety-six privates.

SEC. 6. That whenever it becomes necessary to create new, or alter old brigade districts, the Major General of the division shall call the field officers, or a majority of them together, in which brigades the bounds are to be fixed ; he shall act as president of the board, and cause the division Inspector to record any alterations that may be made ; in like manner whenever it becomes necessary to alter old or create new regimental districts, it shall be the duty of the Brigadier General of the brigade, to call a board of Field Officers, to consist of not less than five, for that purpose, at which board he shall preside, and cause his Brigade Major to record all the proceedings, and alterations made by such board ; also in like manner whenever it becomes necessary to alter old, or create new battalion districts, it shall be the duty of the Colonel to call the Field Officers and Captains of the regiment together, a majority of whom may act ; and it shall be the duty of the Colonel to preside at such meeting, and cause his Adjutant to record all alterations made by such board ; and whenever it becomes necessary to alter old, or create new company districts, it shall be the duty of the Major to call a meeting of the Captains of his battalion, a majority of whom may act ; at which meeting he shall preside ; and it shall be the duty of the Adjutant to record the proceedings and alterations made by such board.

SEC. 7. That no person shall be eligible to a command in the militia in this State who is not a citizen of the United States and of this State, and has not resided in the proper bound at least ten days : and every officer, commissioned by virtue of this act, shall within thirty days after receiving a commission, and previous to entering upon the duties of his office, take an oath to support the Constitution of the United States, and of this State ; also an oath of office ; a certificate of which shall be endorsed on the back of his commission, by the person administering the same : and if any person receiving such commission, who was elected by his own consent, shall fail to take the oaths as aforesaid, within the time herein provided, and give notice thereof within twenty days thereafter to the proper officer, whose duty it shall be to direct such vacancy to be filled, and to forward the date of his commission to the Adjutant of the regiment, he shall be fined in the sum of ten dollars, by sentence of the regimental court martial, and forfeit his office ; which shall be filled as in other cases : *Provided*, That any officer declared duly elected, may receive a certificate of any superior officer, which shall entitle him to command, until his commission can be procured ; and in all cases the officer giving such certificate, shall administer to such officer the necessary oaths of office : *Provided*, also, that whenever it may be necessary to administer oaths to carry into effect any of the provisions of this act,

by date of commission of commanding officer.

Brigade districts how created or altered.

Regimental districts.

Battalion districts.

Company districts.

Who may be eligible to a command.

Officers to take an oath.

On failure to do so.

shall be fined and forfeit their office.

Proviso.

any judge, justice of the peace or officer of the militia, duly commissioned and sworn, shall be authorized to administer such oath.

Volunteer companies of artillery, &c.

SEC. 8. There may be one company of artillery and one company of cavalry, attached to each regiment, to be raised by voluntary enrolment; and one company of grenadiers, light infantry or riflemen, attached to each battalion, to be raised also by voluntary enrolment: *Provided*, It shall not reduce a district company in such regiment or battalion, below the number of forty two, rank and file: and when any person shall enrol himself in such volunteer company, he shall forthwith give notice in writing to the commanding officer of the company in which he was enrolled: and if such company will thereby be reduced below the number of forty two, rank and file, such person shall return to his proper company; and in no case shall an election be held or ordered in any independent company, until it shall be made appear that there are at least forty-two men authorized to serve, enrolled in such intended company: *Provided, also*, that if any volunteer company, properly organized, shall neglect to uniform themselves as the law directs, for six months after the organization of such company, then, and in that case, it shall be the duty of the commanding officer of the regiment or battalion, (as the case may be) to dissolve such company, and attach them to the companies in whose bounds they respectively reside.

Amended: See Act of March 3, 1837.

How to be armed.

SEC. 9. All Light or Independent companies shall be armed and equipped in the same manner that similar corps are in the Army of the United States; and shall consist of the following officers, non-commissioned officers, musicians and privates, to wit: to each company of Cavalry, there shall be one captain, one first, one second and one third lieutenant, one cornet, four sergeants, four corporals, one saddler, one farrier, one trumpeter, and not less than forty-six nor more than one hundred and sixteen, rank and file: to all other independent companies, there shall be one captain, one first, one second, and one third lieutenant, four sergeants, four corporals, one drummer, one fifer, and not less than forty-six, nor more than one hundred and sixteen, rank and file: *Provided*, That each independent company may agree upon an uniform, which they shall wear upon parade and in service.

Officers.

Uniform.

How to serve when called into service.

SEC. 10. All independent companies when called into service, shall serve by company, and if any non-commissioned officer, musician or private, in any such company, shall refuse, or neglect, either by himself or a substitute, to perform such service, after being duly notified, such person shall be considered as in service, and shall be liable to be punished as a deserter: and if any member of such company shall be sick or absent, when his company is called into service, such person shall be required to join his company as soon as his health will permit, or he shall have returned to the State, under the same penalty of refusing or neglecting to perform service: *Provided*, That when any independent company, shall have served a regular tour of duty, no person shall be admitted a member of such company, without producing to the officer commanding the same, a regular discharge, stating that such applicant has served a similar tour.

Proviso.

Resignations.

SEC. 11. For good cause shown, the Commander-in-Chief may

receive the resignation of Major Generals, who may accept the resignation of Brigadier Generals, within their respective division. Brigadier Generals may accept the resignation of Colonels, or officers commanding odd battalions, within their respective brigades; and Colonels or officers commanding odd battalions may accept the resignation of commissioned officers, within their respective commands, and in all cases when a resignation is accepted, the cause of such resignation shall be endorsed on the back of the commission: and it shall be the duty of all officers authorized to accept resignations as above, to order elections to fill such vacancies as may occur by resignation or otherwise, giving at all times sufficient notice of such election; and except in cases of emergency, the order for an election of a Major or Brigadier General, shall be given to the officers commanding regiments or odd battalions, within the limits of the division or brigade, where such election is to be held, at least forty days previous to such election; who shall give to all commissioned officers of their respective commands at least twenty days notice, of the time and place of holding such election. For the election of a Colonel or Major commanding an odd battalion, the order shall be given to the next common superior officer, at least twenty days previous to such election; who shall give at least ten days notice of the time and place of holding such election to all the officers commanding companies within the regiment or battalion, (as the case may be) where such election is to be held; who shall give at least five days notice to their respective commands. For the election of a lieutenant Colonel or Major, there shall be at least fifteen days notice given to all the officers commanding companies, within their respective battalions; who shall give at least five days notice of the time and place of holding such election, to their respective companies. For the election of a captain or commissioned officer, there shall be at least ten days notice given to the senior commissioned, or if there be no commissioned, non-commissioned officer of the company, who shall give to the company at least five days notice of the time and place of holding such election. All returns of elections so held, shall be made to the officer ordering the same, who shall certify to the Adjutant General, within thirty days thereafter, the names of all officers who may have been thus duly elected. And it shall be the duty of all officers authorized to appoint staff officers by this act, to accept their resignation as above, and fill all vacancies in their own staff by appointment: *Provided*, That no resignation of an officer shall be accepted, unless such officer shall have held his commission at least two years.

Cause of, shall be stated.

Elections to fill such vacancies.

Return of the same.

Electors shall vote viva voce.

SEC. 12. The manner of voting shall be, by the elector addressing the judges of the election in his own proper person, and with an audible voice, to be heard by the judges and clerk, name the person he votes for, and the clerk shall enter the name of the person voting, and his vote accordingly, in a poll book to be provided for that purpose; which poll book shall be, (as near as may be) in the following form, to wit:

Form of poll book.

A poll book of an election held at —, in the county of —, in the — regiment of Illinois Militia on the — day of — 18—.

Names of Voters.	Candidates for &c.		
	C	D	F
A B	1		
C D		1	

Form of return.

When all the votes shall be given, they shall be examined and counted; the judges shall cause the clerk to make out a return thereof as near as may be, in the following form, to wit:

At an election held at —, in the county of —, in the — regiment of Illinois Militia, on the — day of — A. D. 18—, the following named persons received the number of votes annexed to their names, for the following described offices, to wit:

- A. B. had — votes for Major General.
- C. D. had — votes for Brig. General.
- E. F. had — votes for Colonel.
- F. G. had — votes for Major.

(and in like manner for all other offices.) Certified by us,

A. B. } Judges
 C. D. } of
 E. F. } election.

Attest.

J. H. Clerk of election.

Which return, when so made out and certified, shall be transmitted by the judges to the officer ordering the election: and the poll book aforesaid, shall be transmitted to the adjutant of the regiment, (or odd battalion as the case may be) to be by him filed with the records of his office: and in case of a contested election, it shall be the duty of the adjutant, to transmit the same to the presiding officer of the court of enquiry, in which such contest shall be tried; and the person having the greatest number of votes shall be declared duly elected.

Contested election.

Contested elections.

SEC. 13. All contested elections, in the militia of this State, shall be tried by a board of officers, to be appointed for that purpose by the officer ordering the same, under the rules and regulations following, to wit: the commander-in-chief shall appoint the board of officers, to decide the contested elections of major generals; major generals shall appoint the board to decide the contested elections of brigadier generals; brigadier generals shall appoint the board to decide the contested elections of colonels, lieutenant colonels and majors; and the commandants of regiments and odd battalions, for the time being, shall appoint the board to decide the contested elections of captains and subaltern officers: *Provided*, That in all cases the members composing such board of officers as aforesaid, shall be as near the rank as may be, of the officer whose election shall be contested; and shall consist of not less than three, nor more than seven members.

Providio.

Notice of to be given in writing.

SEC. 14. The officer appointing the board of officers as aforesaid, shall notify each member thereof in writing, of the time when,

and place where, such board is to be held; and if any officer, when so appointed and notified as aforesaid, shall neglect or refuse to attend at the time and place of holding such board, he shall be liable to be fined as in other cases, for neglect of duty.

SEC. 15. The division inspector, shall attend all boards of officers, which may be organized to pass upon the contested elections of major generals; and shall keep a record of the proceedings of such boards respectively. The brigade inspector shall attend all boards which may be organized to pass upon the contested elections of brigadier generals; and shall keep a record of the proceedings of such boards respectively. And the adjutant of the regiment (or odd battalion, as the case may be,) shall attend all boards which may be organized, to pass upon the contested elections of colonels, lieutenant colonels, majors, captains and subaltern officers; and shall keep a record of the proceedings in each case respectively: and the decisions of all such boards of officers, which may at any time be instituted as aforesaid, shall be final and conclusive upon all the parties concerned.

Records of proceedings in contested elections to be kept and by whom.

SEC. 16. When any election shall be contested as aforesaid, it shall not be lawful for the officer, whose duty it may be to certify the same, to make return thereof, until a decision shall be had thereon, as aforesaid; after which the presiding officer of the board shall certify to the officer who may have appointed the same, which of the contending parties is entitled to the office; and such successful party shall then be commissioned as in other cases: *Provided*, That no exception shall be allowed to be taken to the election of any officer, unless the same be done within ten days after such election shall have been held.

Returns of any contested election not to be made until the same is decided.

Exceptions to any election, when to be taken.

SEC. 17. The presiding officer of any board, which may at any time be appointed, to pass upon a contested election, as aforesaid, shall have power, at the request of either party, to send for and examine witnesses: and if any witness, when properly summoned, shall refuse or neglect to attend any such board as aforesaid, without a reasonable excuse, it shall be the duty of the presiding officer, as aforesaid, to turn such witness over as a delinquent, to the next regular court of inquiry, to be held for the county wherein such witness shall reside; who shall thereupon proceed to acquit or to assess the fine of such witness, as circumstances shall require, in like manner as is prescribed against delinquent militiamen, for failing to attend muster, when legally required so to do.

Presiding officer may send for and examine witnesses.

SEC. 18. All oaths of office to be taken by the militia officers in this State, shall (as near as may be) be in the following form, to wit: I do solemnly swear, (or affirm,) that I will support the constitution of the United States, and of this State; and that I will not be engaged in duelling, either directly or indirectly, during my continuance in office; and that I will faithfully discharge the duties of captain, in the — regiment of Illinois militia, (or otherwise as the case may be,) to the best of my skill and understanding— so help me God. Which said oath shall be endorsed on the commission, or certificate, (as the case may be,) and certified by the officer administering the same.

Oath of officers— form of. Color bearers.

SEC. 19. In addition to the staff in the several regiments and odd battalions, in this State, as at present organized, there shall be

appointed by the commandant of each regiment and odd battalion, a *color bearer*, to each battalion; whose duty it shall be to take charge of the colors of the battalion to which he may belong, and bear the same at all regimental and battalion parades, and drill musters, and on such other occasions as shall be necessary, when required so to do.

Officers, when to be exempt from militia duty.
 SEC. 20. Whenever any officer of the militia in this State, shall have served as such, without intermission, for the period of seven years, and shall have been completely equipped for the whole of said time, according to law, he shall ever after be exempted from the performance of military duty, except in time of war, invasion, or insurrection.

Companies becoming disorganized.
 SEC. 21. If the members of any militia company in this State, shall neglect or refuse to elect company officers, to command such company, when legally notified of the time and place of holding an election, for such purpose, and such company shall thereby become unofficered and disorganized, it shall be the duty of the commandant of the regiment, or odd battalion, (as the case may be,) to attach such company to the next nearest company in the regiment, or battalion, to which the same may belong, without delay; whereupon, the officer commanding the company, to which the same may be attached, shall proceed to enroll the names of all the militiamen within the bounds of such attached company, and shall require them to perform military duty in such company, in all respects, as though they had originally belonged to his command.

Companies now organized, when to equip themselves.
 SEC. 22. All volunteer cavalry, grenadier, light infantry, and rifle companies, now raised and organized, shall have until the first day of April next, to uniform and equip themselves, respectively: *Provided*, That no such company shall hereafter be dissolved for the want of equipment, as the law directs; but in such case, each member shall be fined twenty-five cents, for each and every day he shall appear on parade without being equipped according to law, and the regulation of the company to which he may belong.

Appearing on parade without equipment, fine for.
 SEC. 23. In all cases where militia officers shall be fined for appearing on parade without equipments, the fine shall be proportioned according to the extent to which the uniform of such officer shall be deficient.

Cause of resignation, how to be stated.
 SEC. 24. In all cases, hereafter, where a resignation is accepted, the cause of such resignation may either be endorsed on the commission, or, if the commission be not surrendered, on the letter of resignation.

Regimental musters.
 SEC. 25. There shall be in every year, a muster of each regiment, on such day in September as the commandant of the brigade shall direct, at which all field, staff, and company officers, non-commissioned officers, musicians and privates of the regiment, shall attend, armed and equipped as the law directs.

Battalion musters.
 SEC. 26. There shall be in every year, at such time and place, in April, as the commandant of the battalion may direct, a muster of each battalion, at which every commissioned and non-commissioned officer, musician and private of the battalion, shall attend, armed and equipped as the law directs.

SEC. 27. There shall be in every year, in April, at such time

and place as the commandant of the company may direct, a muster of each company; at which, every commissioned and non-commissioned officer, musician and private of such company, shall attend, armed and equipped as the law directs: and it shall be the duty of the commandants of companies at such muster, to notify the company of the times and places of holding all musters and courts of assessment and appeal, for the current year, which any of the company may be required to attend; which shall be all the notice required for persons regularly enrolled.

Company musters.

SEC. 28. Each brigadier general shall appoint the days in each year, on which the regimental muster shall be held in his brigade, and notify the commandants of regiments, and the major general thereof, by the first day of March annually: *Provided*, That if the brigadier general should fail to notify the commandant of any regiment, of the time prescribed by law, the commandant of such regiment, shall appoint his own regimental muster.

Brigadier Gen. to fix the days on which regimental musters shall be held. Proviso.

SEC. 29. The commander of each regiment, on receiving from the commandant of the brigade, notice of the time of holding the annual regimental muster, shall add thereto the place of holding the same, and also the time and place of holding the annual battalion, and the regimental drill musters, and the court of assessments and appeals; a copy of which, he shall cause to be delivered to the field officers and commandants of companies, by the first day of April thereafter.

Notice of the time of holding regimental drill musters. Place.

SEC. 30. And the brigadier general, is hereby required to attend the regimental musters, in their respective brigades, accompanied by his brigade inspector, whose duty it shall be to inspect the militiamen, their arms and equipments, and report the condition of the same to the major general commanding the division, to which his brigade may belong, within thirty days thereafter; and the said brigadier general is hereby required to review each regiment of his brigade before they are dismissed from parade.

Brigadier Gen. and brigade inspector to attend regimental musters.

SEC. 31. There shall be one regimental drill muster, in each year, at such time and place as may be appointed by the commandant of the regiment as aforesaid, to continue two days; at which all the commissioned and staff officers and sergeants of the regiment shall attend; commissioned officers to be armed with swords, fire arms, and accoutrement: *Provided*, That field officers only, shall be compelled to be armed with swords; non-commissioned officers with fire arms and cartouch boxes, or pouch and horn; and shall be trained and exercised agreeably to the rules and regulations of the Army of the United States; except that surgeon and surgeon's mate, need not attend such drill; and the commandant of the regiment, or in case of his absence, the officer highest in rank or command at such drill, shall cause the roll of officers to be called on each day, note all delinquents, and make return thereof to the next court of assessment: *Provided*, That all the notices required as aforesaid, shall be issued by the colonels and majors commanding odd battalions, in writing, to each of the captains by the first of April annually; and the captains shall give notice to their companies respectively, at least ten days previous to the first muster in the year, by causing written or printed notices to be set up in five of the most public places in the bounds of their com-

Time and place of holding the same.

Officers how to be armed.

Notices of musters.

panies respectively, stating the time and place for all the musters and courts of assessment and appeals for that year.

Fines of privates. Captains not to be fined for failing to wear epauletts in time of peace. County having but 1 regiment, muster where to be held. Persons conscientiously opposed to performing militia duty.

SEC. 32. No private shall be fined more than seventy-five cents, for failing to attend any regimental muster, or more than fifty cents for failing to attend any battalion or company muster. No captain shall be fined for failing to wear epauletts, or subaltern officer for failing to equip himself in time of peace.

SEC. 33. In all cases where there is only one regiment in the county, the regimental muster shall be held at the county seat.

SEC. 34. No persons conscientiously opposed to doing military duty, by reason of their religious opinions, shall be compelled to do so in time of peace: *Provided*, Such person shall be a member of a religious society, whose rules require them to support all poor persons connected with their society: and any person so being opposed to doing militia duty, but not a member of any religious society, may be exempted therefrom on paying seventy-five cents each year into the county treasury. The clerk of the county commissioners' court of the county where such application shall be made, shall require an affidavit of the applicant, that he is conscientiously opposed to doing military duty, and of his age, and make a record thereof, and issue his certificate to such applicant, of his exemption from doing military duty in time of peace; such applicant shall pay the clerk granting such certificate, twenty-five cents; and the clerk shall keep a record of all such certificates and affidavits so granted by him, in a book for that purpose.

Independent companies when raised may petition the Governor for arms.

SEC. 35. That from and after the passage of this act, when any independent company of grenadiers, light infantry, riflemen, artillery; or cavalry, shall become organized and uniformed according to the law providing for the raising of volunteer companies, the captain or commanding officer thereof may petition the governor to furnish him, for the use of his company, with such a number of muskets, rifles, or other arms, with their accoutrements, or if an artillery company, a cannon or field piece, and swords, with their necessary appendages, as their respective companies may require, and set forth in said petition the regiment to which his company belongs, the number it contains, and a specific number and description of the arms and equipments requisite for them; which number shall not be for more than ten persons over and above the number of rank and file his company shall at that time contain; and also to name some place on one of the following navigable streams, viz: Ohio, Wabash, Mississippi, or Illinois, where he will receive the same; which petition shall be accompanied with a certificate of the colonel or commanding officer of the regiment to which it belongs, that such company has been organized according to law, and also, a bond, payable to the Governor and his successors in office, for the use of the people of the State of Illinois, in a penal sum equal to fourteen dollars for each musket and equipment by him so petitioned for, a sum equivalent thereto for such other arms as they may require, according to the prices at which they are rated by the United States, when furnishing them, and signed by himself as principal, with good and sufficient securities conditioned to safely keep and have in readiness for use, the arms and other equipments by him received, in case they should be required at

Nature of petition.

Bond to be given.

any time. Which bond must be proved as to the sufficiency of the security, by the judge of the circuit court of the county where such company is formed: and his certificate thereof, together with the bond, shall be filed in the office of the Secretary of State.

SEC. 36. The Governor, upon application being made to him as aforesaid, shall, if there be any arms or other equipments, so petitioned for, within the State, or due to this State from the United States, immediately (if within the State) direct the person applying where they may be had, and furnish him with an order for the same: or if not, to order the same, and have them directed to the person so petitioning, at the place specified by him: and the person so applying, shall, upon their being landed, consider them in his care, and from that time shall become responsible for the same, upon the conditions of his bond, and shall provide a place for the safe keeping thereof: And said company shall be permitted to use the same upon all occasions, whenever they may be called together for any kind of duty.

Governor, on application, to furnish said arms.

SEC. 37. That there shall be held, annually, at the same place, on the same day week next succeeding the regimental [muster,] a court of enquiry and assessment of fines, to be composed of the colonel, lieutenant colonel, major, and captains, or any five of them, if a regiment, or three if a battalion, may act: the said court to continue in session from day to day, until the business shall be finished. It shall be the duty of said court to assess fines on all delinquent officers, non-commissioned officers, musicians and privates, belonging to such regiment, in conformity to the provisions of this act: and to fine all captains, or officers commanding companies, who shall neglect or refuse to return to said court by twelve o'clock of the day of such court's sitting, all the delinquencies of their respective companies, at the several musters, held during the year, as is made their duty by the 57th section of this act; and it shall be the duty of all delinquents so returned, to appear without further notice at said court, to make a lawful excuse, if any they have; and should any persons feel themselves aggrieved by the decision of said court, they may appeal to the colonel for a new hearing, who shall on receiving satisfactory evidence that it is just, grant the same, by giving an order to the constable to suspend the collection of such fine; and if the person so applying for a new hearing shall fail to attend at the next annual court of assessment, or shall [not] be able to shew cause why he should not have been fined, it shall be the duty of said court to issue their warrant anew for the amount, with an addition of twenty per cent. The presiding officer of each board shall cause the adjutant of the regiment to keep a record of the proceedings of the court, in [a] book kept for that purpose, and make out therefrom a certified list of the names of the persons fined, with the fine or fines annexed to each name; upon which list it shall be the duty of the presiding officer to issue, and furnish to the constable appointed to collect such fines, the following warrant to be endorsed at any time when it may be necessary, which shall be his authority for collecting and paying over the same, to wit:

Regimental court martial how composed.

Duty of said court to assess fines. Appeal.

Record of fines.

Form of warrant to the constable for collecting fines.

STATE OF ILLINOIS, } ss.
_____ COUNTY, }

To A. B. Constable of the county of _____, Greeting :

In the name of the People of the State of Illinois, you are hereby required and commanded to collect from each person named in the foregoing list, the several sums of money set opposite their names, and within ninety days after receiving this warrant, to pay over to the paymaster of the regiment the amount so collected, and take his receipt for the same ; and if any one or more of the said persons shall neglect or refuse to pay the same, you are hereby further commanded to levy on the personal goods and chattels of each delinquent, and make sale thereof according to the law regulating the collection of debts of a similar amount by execution in this State.

Given under my hand, this — day of — A. D. 183 — .

A. F. Colonel

Of the — Regiment — and President of the Court.

Constable neglecting to pay over moneys so collected.

And any constable collecting any fines under the provisions of this act, who shall neglect or refuse to pay over the amount so collected, as required in the foregoing warrant, after deducting twenty per cent., which shall be his fees for collection, it shall be the duty of the paymaster of the regiment to proceed against such constable, or his securities, before any justice of the peace of said county : and the said constable and his securities shall only be exonerated from the payment of the amount of such fines, by showing to the satisfaction of such justice, that there was no property whereon to levy, of which such fine or fines could be made, or that the collection had been suspended by order of the commandant of the regiment, or another board of officers, any constable has neglected his duty, it shall be the duty of such colonel or board to withdraw the warrant, from such constable, and appoint another or others, as the case may require.

Fines to be imposed for neglect of any duties.

SEC. 38. That the following forfeitures and penalties shall be incurred for delinquencies, to wit : By the commandants of divisions for neglect of any of the duties enjoined on them by this act, the sum of twenty dollars ; by the commandant of brigades, for neglect of any lawful orders of his superior officers or any of the duties enjoined on him by this act, the sum of fifteen dollars ; by the commandant of a regiment, for neglect of any orders of his superior officer, or any of the duties enjoined on him by this act, the sum of ten dollars ; by the commandant of a battalion, for neglect of any orders of his superior officers, or any of the duties enjoined on him by this act, the sum of eight dollars ; by the commandant of a company, for neglect of any orders of his superior officer, or any of the duties enjoined on him by this act, the sum of five dollars ; by any subaltern officer for neglect of any orders of his superior officers, or any of the duties enjoined on him by this act, the sum of three dollars ; by the adjutant general, quarter-master general, paymaster general, or either of the aids-de-camp to the commander-in-chief, for neglect of any orders of their superior officer, or any of the duties enjoined on them by this act, the sum of fifteen dollars ; by a division inspector, division quartermaster, division paymaster, or

either of the aids-de-camp to the major general, for neglect of any orders of their superior officer, or any of the duties enjoined on them by this act, the sum of ten dollars ; by a brigade major, brigade quartermaster, or the aid-de-camp to the brigadier general, for any neglect of any orders of their superior officers, or any of the duties enjoined on them by this act, the sum of eight dollars ; by adjutant, quartermaster, paymaster, surgeon, or surgeon's mate of a regiment, for neglect of any orders of their superior officers [or] of any of the duties enjoined on them by this act, the sum of five dollars ; by the regimental non-commissioned staff officers, for neglect of any orders of their superior officers, or any of the duties enjoined on them by this act, the sum of two dollars ; by non-commissioned officers, musicians and privates of companies, for neglect to attend any regimental muster, the sum of two dollars ; or any other muster fixed or ordered agreeably to this act, or for neglect of any orders of a superior officer, the sum of one dollar ; for failing to attend at any muster without their proper arms, uniform, and accoutrements, as is made their duty by this act, they shall be fined in proportion to rank as recited in the foregoing part of this section, in one half the sum for neglect of duty or disobedience of orders : fathers shall be bound for the payment of fines incurred by their sons under twenty-one years of age ; guardians, for the payments of fines incurred by their wards ; and masters, for the payment of fines incurred by their apprentices ; to be charged and collected accordingly.

Fathers.
Guardians.
Masters.

SEC. 39. That on complaint of a commissioned officer in writing to a superior officer, charging any officer, under the command of such superior, with neglect of any of the duties enjoined on them by this act, of disobedience of orders, or of being guilty of any conduct unbecoming an officer or a gentleman, such superior officer shall, if he thinks the complaint sufficient cause for an arrest, cause the officer against whom such complaint is made, to be arrested, by notifying such officer in writing that he is suspended from command until acquitted from such arrest : stating at the same time, the grounds of arrest, and the time and place of trial ; and at the same time notify the officer next in command, that in consequence of such arrest, he is required to do the duties which were enjoined on the officer so arrested : Provided, That when any superior officer shall consider the charges made against any officer of insufficient consequence to cause his arrest, he shall, on application of the officer preferring the charges, give him his reasons in writing for his refusal to cause the arrest : which reason the complaining officer may send, together with the charges, to the next common superior, who may, if he thinks it correct, order the arrest and trial of such officer.

Of arrest of officers.

Proviso.

SEC. 40. That in all cases where an officer is arrested, the officer who orders the arrest shall issue any summonses [subpenas] that may be applied for by either of the parties, or which he may think necessary to compel the attendance of witnesses : and the party so applying, or any person whom the officer granting the summons [subpena] may appoint, may serve the same, and endorse the time of service thereon, which shall be at least three days previous to the sitting of the court martial, and shall make a return

Officer ordering arrest may subpoena witnesses to attend court martial.

thereof to the president of the said court, the first day thereof, who shall, if necessary, administer an oath or affirmation to the person returning the summons [subpena] relative to the service thereof: any person who neglects or refuses to attend a court martial, after being summoned, [subpenaed,] shall be fined in a sum not exceeding fifty dollars, which fine shall be collected and applied as other fines under the provisions of this act; and any court martial shall have power to issue compulsory process to compel the attendance of witnesses who neglect or refuse to attend, after being duly summoned.

Courts martial by whom to be appointed, and who shall preside.

SEC. 41. That major generals shall be tried by courts martial appointed by the commander-in-chief, where a major general shall preside; brigadier generals shall be tried by courts martial appointed by a major general, where a brigadier general shall preside; colonels, lieutenant colonels, majors, and captains, shall be tried by courts martial appointed by a brigadier general, where a colonel shall preside; and subalterns shall be tried by courts martial appointed by a colonel, where a lieutenant colonel or major shall preside: each court martial shall consist of not less than five, nor more than thirteen members, and to be of rank, as near as can be conveniently had, of the officer tried; all courts martial, so ordered, shall have power to punish any officer for neglect of duty, disobedience of orders, contempt, or any conduct unbecoming an officer, or a gentleman, by suspensions, fining, cashiering and disqualification to hold any office in the militia of this State; and in all cases where fines may be assessed against any person by the sentence of such court martial, they shall be collected by warrant from the president, as in the 37th section of this act: *Provided*, That when the militia is called into service, the commanding officer present shall alone have power to order an officer into a state of arrest, except in such cases as is designated in the twenty-seventh article of war.

Contempt, &c.

Oath to be taken by judge advocate.

SEC. 42. That when any court martial is met agreeably to the provisions of this act, the president shall administer the following oath or affirmation to the judge advocate: "You do solemnly swear or affirm, (as the case may be) that you will not disclose or discover the vote of any particular member of this court martial, unless required to give evidence thereof as a witness by a court of justice, nor divulge the sentence of the court to any but the proper authority, until it shall be disclosed by the same;" and the judge advocate, or the person acting as such, shall administer the following oath to each member of such court martial: "You do swear, or affirm, (as the case may be,) that you will truly determine, according to evidence, the matter now before you, between the United States, or the State of Illinois, (as the case may be,) and A. B. (the person to be tried) and that you will truly administer justice, according to law, without partiality, favor, or affection, according to your conscience and the best of your understanding, and the custom of war in like cases, and that you will not divulge the sentence of the court, until it shall be published by the proper authority; neither will you discover the vote or opinion of any member of the court, unless required to give evidence thereof in a court of justice." The judge advocate shall prosecute in the name of the

United States, or of this State, (as the case may be.) but shall so far consider himself counsel for the person accused as to object to any leading question being put to them or any witness which might tend to criminate himself; he shall also see that right and justice shall be done to the accused. All persons giving evidence before a court martial, are to be examined on oath, in the following manner: "You do swear, or affirm, (as the case may be) that the evidence that you give shall be the truth, the whole truth, and nothing but the truth." The court shall have power to punish its members, or any person attending the same, for disorderly conduct, as in other cases; and in giving their votes on any subject, to begin with the lowest in rank: *Provided*, That the party tried by such court martial shall be entitled to a copy of the sentence and the proceedings of the court in his case, after the decision and sentence, upon demand thereof, whether such sentence be approved or not: *Provided*, also, That all sentences of any general court martial shall be submitted to the officer ordering such court, who shall have power to approve or disapprove the sentence of any such court; also to pardon or mitigate the sentence.

Duty of judge advocate.

Sentence to be approved by the officer ordering such court martial.

SEC. 43. That whenever it may be necessary to call into actual service any part of the militia of this State, on a requisition of the executive of the United States, on an actual or threatened invasion of this State, or any of the neighboring States or territories of the United States, the commander-in-chief, shall forthwith demand from each division, a detachment in proportion to the strength thereof, except as hereinafter excepted: which order shall be delivered by a special messenger to the several commandants of divisions, specifying the number required from each division; the time and place of rendezvous, if ordered to march, and if the same be attached [detached] under any particular act of the United States, to endorse the same on such order, and the several commandants of divisions after receiving such notice shall proceed forthwith to detach the same accordingly: *Provided*, That whenever the safety of any of the frontier settlements in this State shall, in the opinion of the Governor, require it, he may exempt the militia in such settlements from being called into service, and make such further provisions for their defence as the necessity of the case may require: which exemption shall be expressed in his orders to the commandants of the divisions, who, together with the commandants of brigades, regiments, battalions, and companies, shall govern themselves accordingly: *And provided also*, That such militiamen may be required to serve as spies on their own frontiers; and that on actual invasion, or any extreme emergency, the commander-in-chief, commandants of divisions, brigades, regiments, battalions, and companies, may call on the whole or any part of the militia under their respective commands, as the nature of the case may require; who shall continue in service, if necessary, until the militia can be regularly called out; and all manner of persons so called, and refusing to serve, shall be liable to the penalties and punishments, as if they had been regularly drafted into actual service.

When it shall be necessary to call into actual service any of the militia of this State, on a requisition of the United States.

SEC. 44. That whenever any detachment of militia of this State, shall be ordered into actual service to perform a tour of duty, under

When called into

service to perform duty under the laws of this State. Shall be divided into classes.

the laws of this State, the commanding officer of brigades or regiments, on receiving the proper orders from any superior officer, shall issue his orders to the commanding officers of the regiment or battalion composing his brigade or regiment, (as the case may be.) detailing to them the number of men required from their respective commands, ordering them to cause the captains or commanding officers of companies, together with the subalterns or commissioned officers of their respective companies composing their regiments or battalions, to furnish the number of men required; and on the receipt of such orders, the commanding officer of each and every company so ordered, shall forthwith assemble his company at their usual place of muster, and at such meeting he shall divide those subject to do military duty by ballot, into as many classes as there are men required of him; and in the case of absence of any of the members of the company, the commanding officer shall draw for him or them, and forthwith notify such absentee or absentees, by himself or a non-commissioned officer; and when such absentee or absentees cannot be found, a written notice shall be left at his or their last and most usual place of abode, signed by a non-commissioned officer, by whom such notice may be proven; which warning shall be deemed sufficient; and each class, so formed, shall furnish one able bodied man, by draft or contract, as such class may agree, within five days thereafter, to the acceptance of the commanding officer of such company, who shall immediately enrol such man or men, and cause them to be marched agreeably to the orders he may have received for that purpose.

When any class shall be called on as mentioned in the preceding section.

SEC. 45. That when any class shall be called on to furnish a militia man agreeably to the preceding section, and any part of such class shall agree and actually furnish such able bodied man, to the acceptance of the commanding officer of such company, and the remaining part of such class, furnishing a man, shall report the same in writing to the commanding officer of the company to which such class may belong; and on the receipt of such report the captain or commanding officer shall immediately assess on the members of the class, equally the amount which may have been paid, or contracted to be paid by that part of the class who have furnished the man, and shall certify and deliver the same over to such part of the class as has furnished the man returned for service; and such man or men having furnished such able bodied man for the class to which they belong, on the receipt of such certificate, shall have full power to sue for and recover in their own name, and for their own use, for each of the remaining parts of the class who have refused or neglected to comply with such requisition, his equal part of the sum, paid or to be paid, as aforesaid, before any justice of the peace or court having competent jurisdiction, which shall be collected with costs of suit, and paid over as in other cases; from which there shall be no appeal or stay of execution: *Provided*, That no more than fifteen dollars per month shall be given, in addition to the regular monthly pay of any substitute so hired in the name and for such class.

If any such class shall

SEC. 46. That if either of the classes when regularly formed, and notified, shall neglect or refuse to comply with the requisitions

of this act within five days, the captain or commanding officer of such company shall detach by draft one able bodied man from each and every class so refusing or neglecting, and cause him to be enrolled and march forthwith to the place of rendezvous; and if such man shall desert or abscond, after being ordered to the place of rendezvous, he shall be advertised, and treated as a deserter; and when any militiaman shall be so drafted, the commandant of his company in which he resides, shall thereupon assess on the remaining members of the class, equally, the sum of fifty dollars, and certify the same to such militiaman, on application, who shall thereupon be authorized and empowered to sue for, and recover, from each of the remaining members of his class, the sum so assessed, in the same manner as the part of a class furnishing a man for a tour of duty are by the provisions of the preceding section empowered to recover from the part neglecting or refusing: *Provided*, That in all cases, any person so drawn, may serve by a sufficient substitute, to be approved by the captain or commanding officer of the company to which he may be offered to serve in.

SEC. 47. That when there may be minors in any class, parents may be bound for their sons, guardians for their wards, to the extent of the funds of such wards in the hands of such guardians, and masters for their apprentices. *When there shall be minors in any class*

SEC. 48. That no militiaman who has served a tour of duty, either by himself or substitute, no militiaman who has paid the whole penalty for neglecting or refusing to perform a tour of duty, shall be called on to serve a second tour of duty until the remaining members of the class have served a tour of duty either by himself or substitute: *Provided*, That all fines or penalties that may be collected for neglect, desertion, or refusal to serve, shall, in time of war, be applied to hiring of substitutes and equally divided among the classes of the company to which the person belonged owing such fine. *When any militiaman has served a tour of duty*

SEC. 49. That when any detachment of militia shall be called into service, the captain or commandant of each company, shall take care that his portion of men are assembled and marched to the proper place of rendezvous; with a list of the men; which list he shall deliver or cause to be delivered to the adjutant of the regiment, who shall make out a roll of the whole, the rank of the officers, and names of the non-commissioned officers and privates; and when the detachment shall be completed, and placed under the proper officer, he shall attend them to a place appointed, for the meeting of the detachment of the brigade, where the several adjutants shall deliver to the brigade major or officer appointed to command the whole detachment from the brigade, a complete roll containing the names of the commissioned officers non-commissioned officers, and privates, composing the detachment from each regiment, noting such remarks as circumstances may require; and it shall be the duty of the officer appointed to command such detachment, to make out two complete rolls of the whole detachment, and certify under his hand, one of which, he shall direct to the brigadier general, and the other to the major general of the brigade and division from which such troops are detached. *When detachment is called into service. Adjutant shall make a roll.*

SEC. 50. That for the purpose of having the militia, when called

Militia when called out, how to be commanded.

into service, properly officered, the following order is hereby enjoined, that is to say; all major generals shall serve on tours of duty agreeably to the dates of their respective commissions, if the whole detachment from the State amounts to a major general's command; and the brigadier generals shall also serve according to the dates of their commissions respectively, if the whole detachment from the State shall amount to a brigadier's command; and if more than one brigadier general's command, the next senior brigadier general, shall be called to take command subordinate and so on in succession; and all other officers, although out of the State at the time the call is made, shall serve according to the dates of their respective commissions, as follows: the senior colonel, lieutenant colonel, major, and platoon officers, within the bounds from which such regiment, battalion, or company was formed, shall take command therein according to rank, in proper succession; and when there shall be two or more commissions of the same rank and date in any regiment, the commandant thereof, shall, in the presence of two disinterested officers, determine the seniority of such officers by lot, which shall ever after govern such officers as to their rank; in like manner the brigadier general shall determine the rank of colonels in his brigade; in like manner major generals shall determine the rank of brigadier generals, in his division; and in like manner, shall the adjutant general determine the rank of major generals: and the rank thus determined, shall be entered on the several rank rolls, as pointed out in this act. The division, brigade, and regimental staff officers will serve on tours of duty with their respective generals or colonels, (as the case may be;) the non-commissioned officers shall serve with their respective company officers, as follows: the first sergeant, first corporal and musicians, shall serve with the captain: the second and third sergeant, and second and third corporal, with the first lieutenant; the fourth sergeant and fourth corporal shall serve with the second lieutenant: *Provided*, That when the adjutant shall be called to perform regular tours of duty with the colonel, he shall, previous to his departure from the regiment, in which he shall belong, deliver all papers and records in his possession, and belonging to the regiment, unto the senior officer remaining in said regiment, who is hereby authorized and required, without delay, to appoint an adjutant *pro tempore*; and when absence, sickness, or other circumstances, prevent any non-commissioned officer of a company, from marching when called, the commissioned officers shall determine by lot, among the other non-commissioned officers, who among them shall perform the tour of duty, in place of him whose duty it was to march; and those persons on whom such lot may fall, shall be compelled to perform the tour of duty in the same manner, as though he was otherwise subject to the same; and he whose duty it was to serve such tour of duty shall march on the next; and any officer or non-commissioned officer who may resign his office after being notified to march on a tour of duty before he has completed the same, shall be compelled to serve on such tour as a private, under all the penalties described by this act, for a private failing to perform a tour of duty after being regularly drafted on such a tour: *Provided*, That the commander-in-chief

When commissions shall be of the same date, the rank to be ascertained by lot.

Staff officers how to serve—non-commissioned how to serve.

When the adjutant shall be called on to serve with a colonel.

Adjutant pro tem.

Proviso.

may, if he shall think it advisable, permit any superior officer to take the command of any detachment of militia called into service; such officer to rank during his continuance in such command agreeably to its number, and the requisition, without regard to his rank in the militia.

SEC. 51. That if any person wishes to be exempted from military duty on account of bodily infirmity or disability, such person shall appear before the next regimental court of inquiry or assessment, where he shall be examined on oath by the surgeon of the regiment, in the presence of the court, relative to his indisposition or disability to perform military duty; the president of the court shall give to each man found disabled, a certificate of exemption until his complaint shall be removed.

SEC. 52. That the militia of this state, when called into actual service, shall serve six months, unless sooner discharged, from the time they arrive from the place of rendezvous within the brigade from which they are detached; which place shall be designated by the commandant of the brigade; and shall in all cases be commanded by the militia officers regularly elected and appointed agreeably to the provisions of this act; and if discharged previous to the expiration of six months, shall be entitled to pay for such time as they have been in the service, allowing them a reasonable time to return to their places of residence, and shall be entitled to [a] discharge for a full tour of duty.

SEC. 53. That the adjutant general shall be allowed, in time of war, four hundred dollars, and in time of peace, one hundred dollars, annually; the division inspector, the sum of five dollars for each regiment he shall actually inspect, by order of the major general of the division, to which he belongs, on the certificate of the major general, the brigade major the sum of ten dollars annually, for each battalion in the brigade to which he belongs, on the certificate of the major general; officers performing the duties of special judge advocate to general courts martial, the sum of one dollar and fifty cents per day; and to officers attending a general court martial, as members or witnesses, the sum of one dollar per day, for every day they may be necessarily employed in the performance of said duties, on the certificate of the officer ordering; and the president of the court, to be paid out of the State treasury: *Provided*, That no compensation will be allowed to officers attending courts martial as members or witnesses, who reside within ten miles of the place where such court is held. The adjutants of regiments, the sum of one dollar and fifty cents per day for attending each battalion and regimental muster, and court of assessment, upon the certificate of the colonel, to be paid out of the funds of the regiment.

SEC. 54. That in addition to the persons exempted from military duty, by the laws of the United States, and by this act, there shall be exempted the following: the lieutenant governor of the State, the chief and associate justices of the supreme and circuit courts, the attorney general of the State, licensed ministers of the gospel, and keepers of jails.

SEC. 55. That the following shall be the uniform and equipments of the several officers of the militia of this State, to be worn

Persons wishing to be exempt on account of disability, &c.

Period of service.

Pay.

Pay of adjutant general and certain other officers.

Proviso.

Persons exempt from doing duty.

Uniform.

at all times when on duty : every general officer, or of the general staff, blue coat and pantaloons, made in the fashion of the United States uniform, gold epaulets, with sword, mounting, buttons, spurs, &c. of the same color ; a round hat, black cockade, white plume, black belt, red silk sash, stock and boots : every regimental officer, a blue coat and pantaloons, made in the fashion of the United States infantry uniform, or common dress coat, as such regimental officer may think proper, silver epaulets or epaulet according to rank, sword, mounting, buttons and spurs of the same color, a round hat, black cockade with plume, with a red top, red belt, stock and boots : *Provided*, That platoon officers, may wear a blue hunting shirt and pantaloons, trimmed with red ; and for good cause shewn, shall not be fined for not wearing epaulets. Officers of the medical staff, may wear a blue coat and pantaloons, made in the fashion of the general staff, with black silk velvet collars and cuffs, yellow mounted sword or hanger, yellow buttons, spurs, &c. but no embroidery or epaulets is [are] allowed them.

*Proviso.**Places of holding musters, by whom to be designated*

SEC. 56. The colonels commanding regiments, lieutenant colonels, and majors commanding battalions, and captains commanding companies, shall appoint the place of holding their several regimental and drill, battalion and company musters, which shall be as near the centre of their respective commands as convenient ; and all officers, non-commissioned officers, musicians, and privates, whose duty it is made by this act, to attend any regimental drill, battalion, or company muster, by the hour of ten, A. M. of the day of such muster, armed and equipped as required by this act ; at half-past ten o'clock, the officers commanding companies, shall cause their respective rolls to be called, and note all delinquents : at eleven o'clock the superior officers present at any regimental, drill, battalion, or company, [muster] shall assume the command, and exercise them until three o'clock, P. M. agreeably to the established discipline for the army of the United States.

Colors to be procured.

SEC. 57. That the colonels commanding regiments, and majors commanding battalions, not attached to a regiment, shall as soon as there are funds sufficient belonging to the regiments or odd battalion, purchase out of said fund, a stand of colors made after the fashion of the United States flag, with the number of the regiment, brigade and division inscribed upon it ; that the captains commanding companies shall furnish their respective musicians, with proper instruments ; and that the drum and fife majors shall furnish themselves with proper instruments, to be paid for out of the funds of the regiment, by order of the regimental board of officers.

Duties of major general.

SEC. 58. That in addition to the services required of the major generals by this act, it shall be their further duty, to review the several regiments, and odd battalions not attached to regiments, composing the several brigades attached to their respective divisions, as often as is consistent, and as, in their opinion, the good of the service may require, to cause their respective division inspectors to record all general orders ; also, all reports and rank rolls received annually from the several brigades attached to their division ; and when required by the commander-in-chief to make out division returns and rank rolls, to be forwarded to the adjutant general of the State ; and to do and perform all other duties that may

be necessary to carry into effect the provisions of this act, or which may appertain to the office of major general.

SEC. 59. That in addition to the services required of the brigadier generals by this act, it shall be their further duty, to review ^{*Of brigadier generals.*} their several regiments and battalions, not attached to regiments, composing their respective brigades, annually, at their regimental or battalion musters, in the fall ; to cause their respective brigade majors to record all reports received annually from the several regiments and odd battalions, composing their commands, and to make out a consolidated brigade return therefrom agreeably to forms, numbers two and four, and forward one copy to the major general of the division, and one to the adjutant general of the State, on or before the first day of December annually ; and to do and perform all other duties which may be necessary to carry into full effect the provisions of this act, or which may be necessary to the perfection of discipline, or which may in any wise appertain to the effect of brigadier general.

SEC. 60. That in addition to the services required of the colonels commanding regiments, and majors commanding battalions, ^{*Of colonels and majors of odd battalions.*} not attached to a regiment, it shall be their further duty to require from the several officers commanding battalions, if a regiment, or companies, if a battalion, complete returns of their respective commands, on the day of a regimental or battalion muster, in the fall of each year ; to cause their adjutants to record all returns so received ; also, all orders received or issued by themselves ; and to make out a regimental return and rank roll, and forward it to the brigadier general of their respective brigades, on the day of holding their annual regimental court of assessment. It shall also be their duty to take the command at all regimental or drill musters, and exercise their regiments or battalions, (as the case may be,) agreeably to the discipline established for the army of the United States : also, to be responsible for the good order of their respective regiments or odd battalions, as the case may be, and cause to be executed the laws and orders applicable to their commands ; and to do and perform all other duties belonging to their respective offices.

SEC. 61. That in addition to the service required of lieutenant colonels and majors commanding battalions by this act, it shall be their further duty, to assume the command at all musters of their respective battalions, to require of the officers commanding companies, annual returns on the day of the regimental muster, in the fall ; and on the same day deliver the returns so received to the officer commanding the regiment ; and to do and perform all other duties which may in any way appertain to their office. ^{*Of lieutenant colonels and majors*}

SEC. 62. That in addition to the services required of captains or officers commanding companies, by this act, it shall be their further duty, to take command of their respective companies, at all company, battalion, and regimental musters, at 10 o'clock, A. M. of the day of holding such muster ; and at half-past ten o'clock call, or cause the roll of their company to be called, under their immediate inspection, noting all delinquents at any such muster upon a company roll, or report of delinquents made out by them for that purpose, agreeably to the form number six ; in ^{*Of captains and officers commanding companies.*}

which all the delinquents at any muster held during the year shall be noted ; which delinquent report, shall be returned to the regimental court of assessment of fines, by 12 o'clock of the day of holding such court, by every such commanding officer ; which shall be considered good evidence against all delinquents there-in returned ; also to make out and deliver to the commanding officer of their respective regiments or battalions, on the day of holding the regimental or battalion musters in the fall, a complete return of the company under their command, agreeably to form number five ; at which muster, they shall cause the names of such persons as have been delinquents at any muster held during the year, to be read aloud ; also, to obey all orders from their superior officers, and to do and perform such other duties as may appertain to their office. It shall also be the duty of all inferior officers, non-commissioned officers, musicians, and privates, to go on parade at all musters so held at 10 o'clock ; and to do and perform such services as may, in any wise, appertain to their respective stations.

In case of the death, absence, &c. of any superior officer, the next in rank to take command.

SEC. 63. That in case of the death, removal, absence, or resignation of any superior officer, it shall be the duty of the next officer in rank, attached to the same corps, to assume the command, and perform all the duties that would have devolved on any such commanding officer, were he present ; and to exercise the same until such superior officer shall return, or [the] vacancy be filled agreeably to the provisions of this act. In like manner, if it should happen at any time that there is no commissioned officer belonging to any company, it shall be the duty of the senior non-commissioned officer of such company, to assume the command, under the same penalties that any superior officer of a company would be, were they present, for any neglect of their duties.

Subordination to be observed.

SEC. 64. That there shall be observed in the several corps of militia in this State, a gradual and universal subordination of authority ; and all inferior officers and privates, shall obey all orders from their respective superior officers ; but it is understood that orders are not to be manifestly against law or reason ; and that nothing in this act, shall be so construed as to prevent any superior officer from taking the command, at any muster of the militia of this State.

Duties of adjutant general.

SEC. 65. That the adjutant general shall keep his office at the seat of government ; and it shall be his duty to receive all certificates of elections for officers held under the authority of this act, to file the same in his office, to procure from the secretary of State the commissions of all officers, duly elected or appointed ; and within ten days after receiving any certificate of election or appointment, forward the commission to the officer by whom such certificate was transmitted ; all which commissions shall be properly registered by him ; also, to lay before the commander-in-chief, an abstract agreeably to the annexed form, number one, of the annual returns of the militia made to his office, and forward to the President of the United States, annually, a duplicate thereof ; to perform the duties of inspector general, and distribute all orders from the commander-in-chief of the divisions, or other corps of militia ; to attend all reviews with the commander-in-chief ; to obey all orders from him relative to carrying into effect the provisions of this act ;

and to do and perform all other acts and duties which appertain to the office of adjutant general.

SEC. 66. That it shall be the duty of the division inspector, of each division, to act as assistant adjutant general, to distribute all orders from the commandants of divisions, or the adjutant general ; attend all reviews with the major general ; to record all orders received or issued by the major general ; also, all returns and rank rolls received annually, from the several brigades composing their divisions ; also, a detail of all detachments marched into service from their division, in a general order book kept for that purpose ; also, to make out division returns, when required by the major general or any superior officer ; and to perform such other duties as may appertain to their office.

Duties of division inspector.

SEC. 67. That in addition to the services required of the brigade majors by this act, it shall be their further duty to attend all regimental musters, and all officer's and drill musters held in the several regiments, or odd battalions not attached to a regiment, composing their respective brigades, to inspect the arms and equipments of all officers and privates at every such muster, and report all such as are delinquent to the commanding officer present, to be handed to the next regimental court of assessment ; also, to record all orders received or issued by the brigadier general ; also, all returns and rank rolls received annually, from the several regiments and odd battalions, composing their respective brigades, in a general order book kept for that purpose ; to consolidate the annual returns and rank rolls received from the several officers commanding regiments and odd battalions in their brigades, into a brigade return, agreeably to the attached forms number two and four ; and on the first day of December, annually, transmit one copy to the major general of the division, and one to the adjutant general of the State ; to keep a correct detail of all detachments marched from their brigade into service ; to distribute all general orders ; and to do and perform such other services as may be necessary for the discipline of the militia, and all other duties that may appertain to the office of brigade inspector.

Duties of brigade major.

SEC. 68. That in addition to the services required of the adjutants of regiments or odd battalions, by this act, it shall be their duty to attend all regimental, drill, and battalion musters, and courts martial, or courts of enquiry held in their respective regiments or battalions, (as the case may be,) to deliver all general and regimental orders ; also, to record all orders received or issued by their respective commanding officers ; also, all annual returns received by them, and the date of each officer's commission belonging to their regiment or battalion, noting the resignations, removals, or death of any officer, in an order book kept for that purpose ; also, to make out under the direction of their commanding officers, regimental returns and rank rolls, agreeably to forms number three and four ; and on the day of holding their annual court of assessment, forward such returns and rank rolls to the general of their respective brigades : to furnish the paymaster of the regiment with a duplicate of all lists of fines put into the hands of any constable for collection ; also, at all regimental or drill musters, in case of the absence of the brigade major, to perform such duties as may be re-

Duties of adjutants of regiments and odd battalions.

quired of him at any such muster ; also, at all regimental, battalion or drill musters, to form the regiment or battalion, (as the case may be,) by eleven o'clock A. M., and immediately thereafter inform the commanding officer that the parade is ready ; also, to keep a correct detail of all detachments marched into service from their regiments or battalions, (as the case may be,) and to do and perform such other duties as may be required of them by their superior officers, and all other duties that may appertain to the office of adjutant.

*Duties of
Sergeant
Major.*

SEC. 69. That it shall be the duty of the sergeant major to assist the adjutant in forming the regiment or battalion, (as the case may be,) at all musters ; also, to assist him in delivering all orders to the regiment ; and to do such other services as he may be required to perform, or that may belong to the station of sergeant major.

*Duties of
quarter-
master
general.*

SEC. 70. It shall be the duty of the quarter-master general, to apply for and receive all arms that are or may become due to this State from the general government, to deposit all arms so received, or which may have heretofore been received, and not otherwise disposed of, in some safe place at the seat of government of this State ; also, to employ such means to preserve all such arms from damage, as, in his opinion, may, from time to time, become necessary ; to furnish, when required so to do, by any superior officer, a full exhibit of all the arms in his possession, belonging to the State ; also to do and perform all other duties that may, in any wise, appertain to the office of quarter-master general.

*Staff offi-
cers, whose
duties are
not herein
particularly
defined.*

SEC. 71. All officers belonging to the general or regimental staff, whose duties are not defined particularly by this act, shall attend all musters held by their respective commanding officers, to obey all orders from them, or any superior officer, and to do and perform such other duties as may in any wise appertain or belong to their respective stations.

*Regiment-
al paymas-
ters to give
bond.*

SEC. 72. All regimental paymasters, appointed under the provisions of this act, shall, and are hereby required to give bond to the county commissioners of the county where he may reside, and their successors in office, with good and sufficient security, in the sum of two hundred dollars, conditioned for the faithful performance of his duty ; which bond shall remain on file in the clerk's office of said commissioners, and be prosecuted on a failure in the conditions thereof, at the suit of the adjutant, in the same manner that a suit could be prosecuted against a sheriff or county treasurer for a failure of the conditions of their bond : it shall also be their duty to receive all money belonging to their respective regiments or odd battalions, (as the case may be,) which they shall only pay out by an order from the regimental court of assessment ; taking at all times, proper vouchers for any moneys so paid ; to attend all courts of inquiry held in their respective regiments or battalions, and lay before the board an account of the finances of the regiment, stating particularly all moneys received and paid out, with his several proceedings relative to the duties of his office ; and all accounts so exhibited, and settled by the board, shall be entered by the adjutant on his order books : and to do and perform such other services as may be required, or which may in any wise appertain to the office of paymaster.

*Suit may be
instituted
on the
same.*

SEC. 73. If any paymaster shall neglect or refuse to pay over *If paymas-
ters refuse
to pay over
moneys.* any moneys that may be in their hands, the adjutant of the regiment shall make an application in writing to the circuit court held in the proper county, against such paymaster, setting forth the facts ; and the adjutant shall give the said paymaster a copy of any such application five days before the session of said court ; whereupon the court shall, at that term, proceed to render judgment against such paymaster and his securities, for the amount of such moneys so retained, with twenty per cent. added, and interest until paid, with costs of suit ; and the testimony of the adjutant or other parole evidence of such delinquency, shall be sufficient for the court to render judgment ; from which there shall be no appeal or stay of execution.

SEC. 74. When any necessary expense shall accrue in carrying into effect the provisions of this act, for the payment of which no provision is herein before made, the same shall be paid out of the contingent fund, by the order of the commander-in-chief.

SEC. 75. That all acts and parts of acts, heretofore passed, *Acts re-
pealed.* concerning the militia of this State, and not embraced in this act, are hereby repealed : *Provided,* That all the militia officers in this State now in commission or entitled to commissions, except in *Proviso.* such cases as are excepted in this act, shall be continued in their respective offices, as though no change had taken place : *Provided,* however, if their number is reduced below that contemplated in the fifth section of this act, they shall not be entitled to hold their offices.

SEC. 76. That whenever there is any new division or brigade *When any
new divi-
sion or
brigade
shall be
created.* created by this act, the elections to fill such vacancies, shall be held on the third Saturday of September next ; the election to be held at the same places that the regimental musters are held, and conducted by the colonels or majors commanding odd battalions ; *Election.* and when there is no commissioned officer in the county, it shall be held by the sheriff, and advertised by him according to law ; and when there is any county in the State that the militia is not organized, the sheriff of such county shall advertise and hold all such elections at the county seat, on the first Saturday in June next.

SEC. 77. That there be fifteen hundred copies of this law printed and distributed, under the direction of the adjutant general, to the several counties in the State. *This act
how to be
printed and
distributed.*

This act to be in force from and after the first day of July next.

No. 1.
GENERAL RETURN of the Militia of the State of Illinois, taken from the returns on file in the Adjutant General's office, for the year 18

	Major Generals.	Brigadier Generals.	Adjutant Generals.	Paymaster Generals.	Quarter Master Generals.	Aids de Camp to the Com- mander in Chief.	Division Inspectors.	Division Paymasters.	Division Quartermasters.	Aids to the Major Generals.	Colonels.	Lieutenant Colonels.	Brigade Majors.	Brigade Quartermasters.	Aids de Camp to Brig. Gen.	Majors.	Capitans.	Adjutants.	Quartermasters.	Paymasters.	First Lieutenants.	Second Lieutenants.	Surgeons.	Surgeons' Mates.	Sergeant Majors.	Quartermaster Sergeants.	Sergeants.	Corporals.	Musicians.	Privates.	Total Commissioned.	Total Non-Commissioned Officers and Privates.	Aggregate.	No. of Cannon.	No. of Muskets.	No. of Rifles.	No. of pairs of Pistols.	Total No. of Arms.
General Staff.	1	3	1	1	1	2	2	2	2	4	35	45	15	15	6	6	30	30	32	40	220	220	39	35	85	35	880	880	440	18800	1016	6516	11978	22	3500	4500	550	4812
2d Division.	1	3	1	1	1	2	2	2	2	4	30	30	3	3	3	3	10	10	20	20	100	100	15	15	15	15	15	100	100	240	4800	580	6008	12	2000	2500	300	4812
1st Division.	1	3	1	1	1	2	2	2	2	2	15	15	3	3	3	3	10	10	20	20	100	100	15	15	15	15	15	200	4000	436	508	10	1500	2000	250	3760		
Aggregate.	2	6	1	1	1	2	2	2	2	4	35	45	15	15	6	6	30	30	32	40	220	220	39	35	85	35	880	880	440	18800	1016	6516	11978	22	3500	4500	550	8572

No. 2.
GENERAL RETURN of the Second Brigade of the First Division of the Illinois Militia, for the year 183

	Brigadier Generals.	Colonels.	Lieutenant Colonels.	Brigade Majors.	Brigade Quartermasters.	Aids de Camp to Brig. Gen.	Majors.	Capitans.	Adjutants.	Quartermasters.	Paymasters.	First Lieutenants.	Second Lieutenants.	Surgeons.	Surgeons' Mates.	Sergeants.	Corporals.	Musicians.	Privates.	Total Commissioned.	Total Non-Commissioned Officers and Privates.	Aggregate.	Cannons.	Muskets.	Rifles.	Pairs of Pistols.	Total of Arms.	
General Staff.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	38	400	436	5	40	20	20	20	400
1st Reg't Infantry.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	23	320	352	2	80	30	15	235	
2d Reg't Infantry.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	300	416	3	30	25	17	132	
3d Reg't Infantry.	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	26	300	416	3	30	25	17	132	
Aggregate.	1	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	91	1020	1208	10	90	75	61	767	

A. B. Brig. Gen. 2d Brig. 1st Div.

No. 3.

RETURN of the — Regiment of Infantry, for the year of our Lord, 1833

	Colonels.	Lieutenant Colonels.	Majors.	Captains.	Adjutants.	Quartermasters.	Paymasters.	First Lieutenants.	Second Lieutenants.	Surgeons.	Surgeons' Mates.	Sergeant Majors.	Quartermaster Sergeants.	Sergeants.	Corporals.	Musicians.	Privates.	Total Commissioned.	Total Non-Commissioned Officers and Privates.	Aggregate.	No. Fieldpieces.	No. Muskets.	No. Rifles.	No. Pairs Pistols.	Total No. of Arms.
Regimental Staff.	1																	9	1	7					132
1st Battalion.		1		5				5									200	16	250	350	2	40	100	20	16
2d Battalion.			1	6				6									250	19	310	399	2	30	80	16	155
3d Battalion.			1	4				4									200	13	240	250	2	20	40	5	60
Aggregate.	1	1	2	15	1	1	1	15	15	1	1	1	1	1	1	1	650	54	801	858	6	190	220	30	378

No. 4.

A RANK ROLL of the Commissioned Officers of the — Regiment of the — Brigade of the — Div. for the year 18

Officers' names and rank.	Date of Officers' Commissions.			Remarks.
	Month.	Day.	Year.	
A. B., Colonel.	July	4	1824	Elected to fill the vacancy of A. B. promoted.
E. F., Lieutenant Colonel	August	10	1825	
G. H., Major.	June	1	1824	Elected since last return.
C. D., Captain.	Sept.	5	1820	
E. L., Captain.		12	1820	
R. K., Captain.	October	15	1825	
B. V., Captain.	"	15	1825	
A. N., 1st Lieutenant.	"	15	1825	
B. C., 1st Lieutenant.	April	8	1826	
E. C., 2d Lieutenant.	"	8	1826	
E. L., Adjutant.	"	8	1826	
E. T., Quartermaster.	"	8	1826	
J. D., Paymaster.	"	8	1826	

No. 5.

A COMPANY RETURN of Captain — Company in the — Regiment for the year 18

Captains.	1
First Lieutenants.	1
Second Lieutenants.	1
Sergeants.	4
Corporals.	4
Musicians.	5
Privates.	50
Total Commissioned.	8
Total Non-Commissioned Officers and Privates.	60
Aggregate.	63
Muskets.	50
Rifles.	20
Pairs of Pistols.	1

A. G., Captain.

No. 6.

A REPORT of delinquents in Capt. — Company, for all the Musters held in the year 18

Names of Officers and Privates.	Delinquents at a Company Muster in April.			Delinquents at a Battalion Muster in May.			Delinquents at the Company Muster in June.			Delinquents at the Drill Muster in July.			Delinquents at the Regimental Muster in October		
	Absent.	Without Arms.	Without uniform.	Absent.	Without Arms.	Without uniform.	Absent.	Without Arms.	Without uniform.	Absent.	Without Arms.	Without uniform.	Absent.	Without Arms.	Without uniform.
Captain A. B.	1			1											
1st Lieut. G. D.															
2d Lieut. E. C.				1											
Sergeant G. H.															
Sergeant K. L.															
Private R. S.															
" G. N.		1													
" P. L.															
" R. P.				1	1	1									

APPROVED, March 2, 1833.

In force March 4, 1837.

AN ACT to amend an act entitled "An act for the organization of and government of the militia of this State," approved March 2d, 1833.

What counties to compose 5th division of militia.

6th division

1st brigade of 5th division.

2nd brigade of 5th division.

3d brigade of 5th division.

1st brigade 6th division

2d brigade 6th division

Elections when held and how conducted.

For major general and other officers and when.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the counties of Calhoun, Pike, Schuyler, Adams, Hancock, McDonough, Warren, Knox, Fulton, Peoria, Henry, and Mercer, shall compose the fifth division of the Illinois militia: the counties of Jo Daviess, Whiteside, Rock-Island, Ogle, Putnam, La Salle, Iroquois, Will, Kane, Cook, McHenry, and Winnebago shall compose the sixth division of the Illinois militia: the counties of Calhoun, Pike, Schuyler, and Adams shall compose the first brigade of the fifth division; and the counties of Fulton, Peoria, Henry, and Knox shall compose the second brigade of the fifth division; and the counties of Hancock, McDonough, Warren, and Mercer shall compose the third brigade of the fifth division; the counties of Jo Daviess, Whiteside, Rock-Island, Ogle, Winnebago, and Putnam shall compose the first brigade of the sixth division; and the counties of La Salle, Iroquois, Will, Cook, Kane, and McHenry shall compose the second brigade of the sixth division.

SEC. 2. An election shall be held by the officers of the third brigade of the fifth division at such time as the Major General of said division may order and direct. Said election shall be conducted in all respects in the same manner as is provided for in the act to which this is an amendment.

SEC. 3. There shall be an election for Major General of the sixth division, and for Brigadier Generals of the first and second brigades of said division, held on the second Saturday of Septem-

ber next. Said elections shall be held and conducted in all respects, as is provided for in the act to which this is an amendment, and returns thereof shall be forthwith transmitted to the Adjutant General's office at Vandalia, whose duty it shall be at the expiration of forty days from the day of said election, to open and canvass the returns of election, and cause commissions to issue to the person who may appear to be elected by said returns. *Returns thereof.*

SEC. 4. It shall be the duty of the sheriffs of the several counties in the fifth and sixth divisions, in which the militia are not organized, to cause elections to be held on the second Saturday in August next, for one Major in each of said counties, by giving three weeks previous notice, by posting up written notices in three of the most public places in their respective counties: said elections to be held at the county seat of each county, or place of holding courts, under the direction of the sheriff, who shall appoint three judges and two clerks to conduct the same. Said elections shall be conducted in all respects as is provided in the act to which this is an amendment. And it shall be the duty of the said sheriffs, immediately after said elections, to transmit returns thereof of their respective counties, to the Adjutant General, whose duty it shall be to cause commissions to be issued to the persons so elected. *Duty of Sheriffs to hold elections. To transmit returns*

SEC. 5. The militia of said counties, organized as aforesaid, shall each constitute an odd battalion. And it shall be the duty of the several majors so elected to proceed immediately to organize their respective battalions, by laying out the same into company districts, and causing captains and lieutenants to be elected. Said battalion shall, when organized, be governed, and perform duty in the same manner, as the militia of this State are. *Odd battalion.*

SEC. 6. The majors of said battalions shall, so soon as they are organized as aforesaid, report to their respective brigadier generals. *Major's duty.*

SEC. 7. Whenever it shall be necessary to divide any regiment in this State so as to make two regiments, it shall be the duty of the colonel or officer commanding the same, to notify the brigadier general of his brigade thereof, who may, if he think such division proper, issue his order to the colonel, or officer commanding said regiment, directing him to convene a board of officers of his regiment, which shall consist of all the commissioned officers thereof, a majority of whom shall constitute a quorum, the colonel, or officer highest in rank present, presiding. Said board, when so convened, shall proceed to determine whether they will divide said regiment; and if a division is agreed upon, they shall designate the line of division, and the place of holding the regimental muster of the new regiment, and cause the same to be recorded by the adjutant of said regiment, who shall be in attendance for that purpose. A return of the proceedings of said board shall forthwith be transmitted to the general of said brigade, who shall issue his order for an election for a colonel to command the new regiment, which shall be conducted, and return thereof made as in other cases. *Division of regiments. Return.*

SEC. 8. Commissioned officers, living in the bounds of any regiment so created, shall continue to hold their respective offices as though no such division had been made.

Power of colonel, &c. to appoint staff.

SEC. 9. Colonels and commanders of odd battalions shall in all cases have the power to appoint their own staff.

SEC. 10. The elections provided for by this act shall be subject to be contested, in the same manner as is provided for by the act to which this is an amendment.

APPROVED, 4th March, 1837.

In force March 2, 1837.

AN ACT encouraging volunteer companies.

Adopt constitution, not inconsistent with laws.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That whenever any volunteer or independent company has become organized, or shall hereafter become organized, according to the laws of this State, it shall be lawful for such company, at any regular meeting thereof, to adopt a constitution and by-laws for the regulation and government of said company, which shall not be inconsistent with the constitution of the United States or of this State.

Duty of acting sergeant. Record.

SEC. 2. It shall be the duty of the acting orderly sergeant of the company to keep a perfect and complete record of the constitution and by-laws of said company, which shall be signed by the acting captain of the company, and countersigned by the acting orderly sergeant, and said constitution and by-laws shall, at all times, be subject to the inspection of any member of the company, and of all militia officers, and any person interested therein.

Fines.

SEC. 3. Said constitution and by-laws may fix the fines and penalties which shall be imposed on any member of the company for an infraction of any of the provisions of said constitution or by-laws, and may also fix the fines which shall be imposed on any member for a failure to parade at any muster which may be called, according to the constitution or by-laws of the company.

Failure to parade.

SEC. 4. No company shall be entitled to any of the benefits of this law, which shall not provide in its constitution or by-laws for company musters during the year.

Violation.

SEC. 5. When any member of the company shall have been guilty of a violation of any of the provisions of the constitution or by-laws of the company and a fine shall have been assessed on him in accordance with the provisions of said constitution and by-laws, it shall be the duty of the acting orderly sergeant of the company, or in case he is interested, then of the next sergeant of the company, to demand of such member said fine, and in case of his neglect or refusal to pay the same, it shall be lawful to bring suit for the same in the name of the company before any justice of the peace of the county, subject to an appeal to the circuit court, as in cases of debt or assumpsit: Provided, however, that when said suit shall be brought, security for costs shall be given by some responsible person or persons, in case said suit shall be determined against said company.

To bring suit. Before justice.

Evidence.

SEC. 6. It shall be sufficient evidence that the constitution or by-laws have been regularly adopted if they are signed by the act-

ing captain and countersigned by the acting orderly sergeant of the company, and any member of said company may be a witness in all cases brought under the provisions of this law.

SEC. 7. All fines collected under this law shall be received by the acting orderly sergeant or acting captain of the company, and shall be used for the benefit and under the direction of the company.

Fines collected.

SEC. 8. It shall be lawful for any two or more volunteer companies to organize themselves into an odd battalion, and elect their major and all other staff officers; Provided, the parade grounds of said companies are in the same county and not more than twenty-five miles apart, and in case there shall be four or more volunteer companies in one county, they may organize themselves into a regiment and two battalions, and elect their colonel and staff officers in such manner as may be mutually agreed upon by the respective companies.

Two or more companies to be organized into an odd battalion. Four companies in one county may form a regiment.

SEC. 9. Whenever any battalion or regiment shall become organized as aforesaid, it shall be lawful for the same to adopt a constitution and by-laws for their government, as is above provided for in the cases of companies, the acting colonel or major, (as the case may be,) supplying the place of the acting captain and the acting adjutant the place of the acting orderly sergeant.

When organized.

SEC. 10. Any person serving eight years in one or more volunteer or independent companies, shall be exempt from performing any military duty in time of peace, upon obtaining a certificate or certificates, that he has faithfully discharged his duty as a member of said company.

Eight years service shall exempt from military duty. Certificate.

SEC. 11. So much of the 8th section of an act entitled an act for the organization and government of the militia of this State, in force July 2d, 1833, as requires a volunteer to give notice in writing, to the commanding officer of the company in which he was enrolled, and authorizes commandants of regiments to disband independent companies, be, and the same is hereby repealed.

Act repealed.

This act to take effect from and after its passage.

APPROVED, March 2, 1837.

NEGROES, &c.

AN ACT respecting Free Negroes, Mulattoes, Servants and Slaves.

In force March 30, 1819.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That from and after the passage of this act, no black or mulatto person shall be permitted to settle or reside in this state, unless he or she shall first produce a certificate, signed by some judge or clerk of some court in the United States, of his or her actual freedom; which certificate shall have the seal of such court affixed to it. On producing the same to the clerk of the circuit court of the county in which he

Certificate of freedom.

shall intend to settle, it shall be the duty of such clerk to make an entry thereof, and endorse a certificate on the original certificate, stating the time the same was entered in his office, and the name and description of the person producing the same; after which it shall be lawful for such free negro or mulatto to reside in this state.

Negroes having families.

SEC. 2. *And be it further enacted,* That it shall be the duty of all free negroes and mulattoes who shall come to reside in this state after the first day of June next, and having a family of his or her own, and having a certificate as mentioned in the first section of this act, to give to the clerk of the circuit court at the time of making an entry of his certificate, a description, with the name and ages of his, her, or their family, which shall be stated by the clerk in the entry made by him of such certificate; and the clerk shall also state the same on the original certificate: *Provided, however,* that nothing contained in this or the preceding section of this act, shall be construed to prevent the overseers of the poor in any township, from causing any such free negro or mulatto to be removed who shall come into this state contrary to the provisions of the act concerning the poor.

Shall not be brought into this state for the purpose of being emancipated.

SEC. 3. *And be it further enacted,* That it shall not be lawful for any person or persons to bring into this state, after the passage of this act, any negro or mulatto, who shall be a slave or held to service at the time, for the purpose of emancipating or setting at liberty any such negro or mulatto; and any person or persons who shall so bring in any such negro or mulatto for the purpose aforesaid, shall give a bond to the county commissioners of the county where such slave or slaves are emancipated, in the penalty of one thousand dollars, conditioned that such person so emancipated by him, shall not become a charge on any county in this state; and every person neglecting or refusing to give such bond, shall forfeit and pay the sum of two hundred dollars for each negro or mulatto so emancipated or set at liberty, to be recovered by action of debt before any court competent to try the same, to be sued for in the name of the county commissioners of the county where the same shall happen, to the use of the county.

Negroes residing in this state at the passage of this act.

SEC. 4. *And be it further enacted,* That every black or mulatto person (slaves and persons held to service excepted) residing in this state at the passage of this act, shall, on or before the first day of June next, enter his or their name, (unless they have heretofore entered the same,) together with the name or names of his or her family, with the clerk of the circuit court of the county in which they reside, together with the evidence of his or her freedom; which shall be entered on record by the said clerk, together with a description of all such persons; and thereafter the clerk's certificate of such record shall be sufficient evidence of his or her freedom: *Provided, nevertheless,* That nothing in this act contained, shall be construed to bar the lawful claim of any person or persons to any such negro or mulatto.

Not having certificates shall not be employed.

SEC. 5. *And be it further enacted,* That it shall not be lawful for any person or persons residing in this state after the first day of June next, to hire, or in any wise employ any black or mulatto person, unless such person shall have one of the certificates aforesaid; and any person who shall hire or employ any black or

mulatto person contrary to the provisions of this section, shall pay the sum of one dollar and fifty cents for each day they shall hire or employ any such black or mulatto person, recoverable before any justice of the peace, or court competent to try the same, in the name of the county commissioners of the county where the offence may be committed; one third thereof to the person giving the information, and the other two-thirds to the use of the county; which said two-thirds shall be paid to the owner or owners of the black or mulatto person, if any there shall be, and apply for the same.

SEC. 10. *And be it further enacted,* That servants shall be provided by the master with wholesome and sufficient food, clothing, and lodging, and at the end of their service, if they shall not have contracted for any reward, food, clothing, and lodging, shall receive from him one new and complete suit of clothing, suited to the season of the year, to wit: a coat, waistcoat, pair of breeches, and shoes, two pair of stockings, two shirts, a hat, and blanket.

Masters, duty of.

SEC. 11. *And be it further enacted,* That the benefit of the said contract of service shall be assignable by the master to any person being a citizen of this state, to whom the servant shall, in the presence of a justice of the peace, freely consent that it shall be assigned, the said justice attesting such free consent in writing; and shall also pass to the executors, administrators, and legatees of the master.

Contracts for service assignable.

SEC. 12. *And be it further enacted,* That any such servant being lazy, disorderly, guilty of misbehavior to his master or master's family, shall be corrected by stripes, on order from a justice of the county wherein he resides; or refusing to work, shall be compelled thereto in like manner, and moreover shall serve two days for every one he shall have so refused to serve, or shall otherwise have lost, without sufficient justification. All necessary expenses incurred by any master for apprehending and bringing home any absconding servant, shall be repaid by further services, after such rates as the circuit court of the county shall direct, unless such servant shall give security, to be approved of by the court, for the payment in money within six months after he shall be free from service, and shall accordingly pay the same.

Servants guilty of misbehavior.

SEC. 13. *And be it further enacted,* That if any master shall fail in the duties prescribed by this act, or shall be guilty of injurious demeanor towards his servant, it shall be redressed on motion, by the circuit court of the county wherein the servant resides, who may hear and determine such cases in a summary way, making such orders thereupon, as in their judgment will relieve the party injured in future.

Masters failing in their duties.

SEC. 14. *And be it further enacted,* That all contracts between masters and servants, during the time of service, shall be void.

Contracts.

SEC. 15. *And be it further enacted,* That the circuit court of every county shall, at all times, receive the complaints of servants, being citizens of any of the United States of America, who reside within the jurisdiction of such court, against their masters or mistresses, alleging undeserved or immoderate correction, insufficient

Circuit courts, duty of.

allowances of food, raiment, or lodging, and may hear and determine such case in a summary way, making such orders thereupon as in their judgment will relieve the party injured in future; and may also, in the same manner, hear and determine complaints of masters and mistresses against their servants, for desertion without good cause, and may oblige the latter, for loss thereby occasioned, to make restitution by further services after the expiration of the time for which they had been bound.

Servants acquiring property.

SEC. 16. *And be it further enacted*, That if any servant shall at any time bring in goods or money during the time of their service, shall by gift, or other lawful means, acquire goods or money, they shall have the property and benefit thereof to their own use; and if any servant shall be sick or lame, and so become useless or chargeable, his or her master or owner shall maintain such servant until his or her time of service shall be expired; and if any master or owner shall put away any lame or sick servant, under pretense of freedom, and such servant becomes chargeable to the county, such master or owner shall forfeit and pay thirty dollars to the overseers of the poor of the county wherein such offence shall be committed, to the use of the poor of the county, recoverable with costs, by action of debt, in any circuit court; and moreover, shall be liable to the action of the said overseers of the poor at the common law for damages.

Negroes, &c. purchasing white servants.

SEC. 17. *And be it further enacted*, That no negro, mulatto, or Indian, shall at any time purchase any servant, other than of their own complexion; and if any of the persons aforesaid shall, nevertheless, presume to purchase a white servant, such servant shall immediately become free, and shall be so held, deemed, and taken.

Buying and selling of, or to servants without master's consent.

SEC. 18. *And be it further enacted*, That no person shall buy, sell, or receive of, to, or from any servant or slave, any coin or commodity, without leave or consent of the master or owner of such slave or servant; and any person so offending shall forfeit and pay to the master or owner of such slave or servant, four times the value of the thing so bought, sold, or recovered, to be recovered with costs of suit, before any court having cognizance of the same; and every servant, upon the expiration of his or her time, shall be entitled to a certificate from the clerk of the court of the county where such servant is indentured or registered, and such certificate shall indemnify any person for hiring or employing such person.

Punishment.

SEC. 19. *And be it further enacted*, That in all cases of penal laws, where free persons are punishable by fine, servants shall be punished by whipping, after the rate of twenty lashes for every eight dollars, so that no servant shall receive more than forty lashes at any one time, unless such offender can procure some person to pay the fine.

Expiration of service.

SEC. 20. *And be it further enacted*, That every servant, upon the expiration of his or her time, and proof thereof made before the circuit court of the county where he or she last served, shall have his or her freedom recorded, and a certificate thereof, under the hand of the clerk, which shall be sufficient to indemnify any person for entertaining or hiring such servant; and if such certifi-

cate should happen to be torn or lost, the clerk, upon request, shall issue another, reciting therein the loss of the former.

SEC. 21. *And be it further enacted*, That if any slave or servant shall be found at a distance of ten miles from the tenement of his or her master, or the person with whom he or she lives, without a pass, or some letter, or token, whereby it may appear that he or she is proceeding by authority from his or her master, employer, or overseer, it shall and may be lawful for any person to apprehend and carry him or her before a justice of the peace, to be by his order punished with stripes, not exceeding thirty-five, at his discretion.

SEC. 22. *And be it further enacted*, That if any slave or servant shall presume to come and be upon the plantation, or at the dwelling of any person whatsoever, without leave from his or her owner, not being sent upon lawful business, it shall be lawful for the owner of such plantation, or dwelling house, to give or order such slave or servant ten lashes on his or her bare back.

SEC. 23. *And be it further enacted*, That riots, routs, unlawful assemblies, trespasses, and seditious speeches, by any slave or slaves, servants or servants, shall be punished with stripes, at the discretion of a justice of the peace, not exceeding thirty-nine, and he who will may apprehend and carry him, her, or them before such justice.

SEC. 24. *And be it further enacted*, That if any person or persons shall permit or suffer any slave or slaves, servant or servants of color, to the number of three or more, to assemble in his, her, or their out house, yard, or shed, for the purpose of dancing or reveling, either by night or by day, the person or persons so offending shall forfeit and pay the sum of twenty dollars, with costs, to any person or persons who will sue for and recover the same by action of debt or indictment, in any court of record proper to try the same.

SEC. 25. *And be it further enacted*, That it shall be the duty of all coroners, sheriffs, judges, and justices of the peace, who shall see or know of, or be informed of any such assemblage of slaves or servants, immediately to commit such slaves or servants to the jail of the county, and on view or proof thereof, order each and every such slave or servant to be whipped, not exceeding thirty-nine stripes, on his or her bare back, on the day next succeeding such assemblage, unless it shall happen on a Sunday, then on the Monday following; which said stripes shall be inflicted by any constable of the township, if there should be one therein, or otherwise, by any person or persons whom the said justices shall appoint, and who shall be willing so to inflict the same: *Provided, however*, That the provisions hereof shall not apply to any persons of color who may assemble for the purpose of amusement, by permission of their masters, first had in writing, on condition that no disorderly conduct is made use of by them in such assemblage.

APPROVED, March 30, 1819.

In force
Feb. 1,
1831.

AN ACT to amend an act, entitled "*An act respecting free Negroes, Mulattoes, Servants, and Slaves,*" approved January 17, 1829.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That no black or mulatto person shall hereafter be permitted to come and reside in this state, until such person shall have given bond and security, as is required in the first section of the act to which this is an amendment. Any person who shall hereafter bring into this state any black or mulatto person, in order to free him or her from slavery, or shall directly or indirectly bring into this state, or aid or assist any person in bringing any such black and mulatto person to settle or reside therein, shall be fined one hundred dollars, on conviction, or indictment, or before any justice of the peace in the county where such offence shall be committed.

Negroes to
give bond.

Penalty for
bringing
negroes in-
to state.

APPROVED, Feb. 1, 1831.

In force
Jan. 17,
1829.

AN ACT respecting free Negroes and Mulattoes, Servants, and Slaves.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That from and after the passage of this act, no black or mulatto person, not being a citizen of some one of the United States, shall be permitted to reside in this state, until such person shall produce to the county commissioners' court where he or she is desirous of settling, a certificate of his or her freedom, which certificate shall be duly authenticated in the same manner that is required to be done, in cases arising under the acts and judicial proceedings of other states. And until such person shall have given bond, with sufficient security, to the people of this state, for the use of the proper county, in the penal sum of one thousand dollars, conditioned that such person will not, at any time, become a charge to said county, or any other county of this state, as a poor person, and that such person shall, at all times, demean himself, or herself, in strict conformity with the laws of this state, that now are, or hereafter may be enacted; the solvency of said security shall be approved of by said clerk. The clerk shall file said bond, and if said bond shall in any condition thereof be broken, the whole penalty shall become forfeited, and the clerk, on being informed thereof, shall cause the said bond to be prosecuted to effect. If any person shall harbor such negro or mulatto, as aforesaid, not having such certificate, and given bond, and taken a certificate thereof, or shall hire, or in any wise give sustenance to such negro or mulatto, not having such certificate of freedom, and of having given bond, shall be fined in the sum of five hundred dollars, one half thereof to the use of the county, and the other half to the party giving information thereof: *Provided,* this sec-

Negroes
and mulat-
toes how to
gain a resi-
dence.

They shall
give bond.

Person
harboring
negroes,
&c.
Fined.
Proviso.

tion shall not affect any negro or mulatto who shall be a resident of this state at the time of the passage of this act.

SEC. 2. Every black or mulatto person who shall be found in this state, and not having such a certificate as is required by this act, shall be deemed a runaway slave or servant, and it shall be lawful for any inhabitant of this state to take such black or mulatto person before some justice of the peace, and should such black or mulatto person not produce such certificate as aforesaid, it shall be the duty of such justice to cause such black or mulatto person to be committed to the custody of the sheriff of the county, who shall keep such black or mulatto person, and in three days after receiving them, shall advertise them at the court house door, and shall transmit a notice, and cause the same to be advertised for six weeks in some public newspaper printed nearest to the place of apprehending such black person, or mulatto, stating a description of the most remarkable features of the supposed runaway; and if such person so committed, shall not produce a certificate, or other evidence of their freedom, within the time aforesaid, it shall be the duty of the sheriff to hire them out for the best price he can get, after having given five days previous notice thereof, from month to month, for the space of one year; and if no owner shall appear and substantiate his claim before the expiration of the year, the sheriff shall give a certificate to such black or mulatto person, who, on producing the same to the next circuit court of the county, may obtain a certificate from the court, stating the facts, and that the person shall be deemed a free person, unless they shall be lawfully claimed by their proper owner or owners thereafter. And as a reward to the taker up of such negro, there shall be paid by the owner, if any, before he shall receive him from the sheriff, ten dollars, and the owner shall pay to the sheriff, for the justice, two dollars, and reasonable costs for taking such runaway to the sheriff, and also pay the sheriff all fees for keeping such runaway, as other prisoners: *Provided, however,* That the proper owner, if any there be, shall be entitled to the hire of any such runaway from the sheriff, after deducting the expenses of the same: and *Provided, also,* That the taker up shall have a right to claim any reward which the owner shall have offered for the apprehension of such runaway; should any taker up claim any such offered reward, he shall not be entitled to the allowance made by this act.

SEC. 3. No person of color, negro, or mulatto, of either sex, shall be joined in marriage with any white person, male or female, in this state, and all marriages or contracts entered into between such colored person and white person, shall be null and void in law; and any person so offending shall be liable to pay a fine, whipped in not exceeding thirty-nine lashes, and be imprisoned not less than one year; and every person so offending shall be held to answer in no other than a criminal prosecution, by information or indictment. And any clerk who shall knowingly issue a license to any such colored person, negro or mulatto, or to any white person to be joined to a negro or mulatto, in manner aforesaid, or if any officer or person authorized to solemnize marriages in this state, shall join any such colored person, negro or mulatto, in marriage with a white person, such magistrate, or other person so of-

Negroes
not having
a certificate
shall be ar-
rested as
runaways.

Notice
thereof.

And to be
hired out.

Sheriff's
certificate
thereof.

Upon
which, cir-
cuit court
may grant
a certificate
of freedom.

If the
owner shall
appear.
Costs to be
paid.

Owner
entitled to
the hire.
Taker up
may claim
reward.

Marriage
of white
persons and
negroes.

Punished.
Clerk issu-
ing a li-
cense for.

Or officer
joining in
marriage.

Shall be
fined.

And ineli-
gible to
office.

Negroes
hiring in
this state,
and suing
for their
freedom.

May be
arrested
and sent to
their mas-
ters.

In force
March 1,
1833.

Persons
failing to
comply with
the 3d sec-
tion of the
act to which
this is an
amendment
discharged
from the
penalty in-
curred un-
der said act.

fending, as aforesaid, on conviction thereof, shall be fined in a sum not less than two hundred dollars, to be sued for and recovered in any court of record in this state, the one half for the use of the county in which said suit is brought, and the other half to the person suing for the same; and thereafter be ineligible to any office in this state.

SEC. 4. If any negro or mulatto, being the property of a citizen of the United States, residing without this state, shall hereafter come into this state for the purpose of hiring himself, or herself, to labor in this state, and shall afterwards institute, or procure to be instituted, any suit or proceedings, for the purpose of procuring his or her freedom, it shall be the duty of the court before which such suit or proceeding shall be instituted and pending, upon being satisfied that such negro or mulatto had come into this state for the purpose aforesaid, to dismiss such suit, or proceeding, and cause the same to be certified to the sheriff of the county, who shall immediately take possession of such negro or mulatto, whose duty shall be to confine such negro or mulatto in the jail of his county, and notify the owner of such slave of the commitment aforesaid, and that said owner make immediate application for said slave; and it shall be the duty of the sheriff, on such application being made, after all reasonable costs and charges being paid, to deliver to said owner such negro or mulatto slave.

APPROVED, Jan. 17, 1829.

AN ACT to amend an act entitled "An act respecting Free Negroes, Mulattoes, Servants, and Slaves," approved March 30, 1819.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That any person who may have failed or neglected, or may hereafter fail or neglect to comply with the 3d section of the act to which this is an amendment, shall be, and they are hereby released and entirely discharged from the penalty incurred, or to be incurred, under the provisions of said act, upon condition that such person shall, before any judgment shall be rendered against him, enter into bond, as is provided by said act, to indemnify the county wherein such penalty may have been, or may be incurred from any charge or liability of any description whatever heretofore incurred, or hereafter to be incurred, on the account of the emancipation of any person or persons of the description in the said act named, and on the further condition of the payment of all costs of suit accumulated by or under any prosecution instituted against such person for an infringement of the said 3d section of the act to which this is an amendment.*

APPROVED, March 1, 1833.

* NE EXEAT AND INJUNCTIONS.

AN ACT regulating the issuing of writs of Ne Exeat and Injunctions. In force June 1, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That writs of ne exeat republica, may hereafter be granted, as well in cases where the debt or demand is not actually due, but exists fairly and bona fide in expectancy at the time of making application, as in cases where the demand is due; and it shall not be necessary to authorize the granting of such writ of ne exeat, that the applicant should shew that his debt or demand is purely of an equitable character, and only cognizable before a court of equity.* When ne exeat may be granted

SEC. 2. In case of joint, or joint and several obligors or debtors, if one or more of them be about to remove without the jurisdictional limits of this state, taking their property with them, leaving one or more co-obligors or debtors bound with them for the payment of any sum of money, or for the delivery of any article of property, or for the conveyance of land at a certain time, which time shall not have arrived, at the time of such intended removal, such co-obligor or debtor who remains, shall be entitled on application to a writ of ne exeat, to compel the co-obligor or co-debtor, who is about to remove, to secure the payment of his part of the sum to be paid, or of the delivery of the property, or to convey or to join in the conveyance of the land. Also, in cases of security, the writ of ne exeat may issue on application of a security, against the principal or co-security, when the obligation or debt shall not be yet due, and the principal or co-security is about removing out of the state. In case of joint or several obligors.

SEC. 3. No writ of ne exeat shall be granted, but upon bill or petition filed, and affidavit to the truth of the allegations therein contained; upon the granting of any such writ, the court or judge granting the same, shall endorse or cause to be endorsed, on the bill or petition, in what penalty, bond, and security shall be required of the defendant; and shall also, before issuing the said writ, take bond of the complainant, with good and sufficient security, in such sum as the said court or judge shall deem proper, conditioned, that the said complainant will prosecute his bill or petition with effect; and that he will reimburse to the defendant, such damages and costs as he shall wrongfully sustain by occasion of the said writ. If any defendant to such writ of ne exeat shall think himself aggrieved, he may bring suit on such bond; and if on trial, it shall appear that such writ of ne exeat was prayed for without a just cause, the person injured shall recover damages, to be assessed as in other cases on penal bonds. Bill or petition to be filed.

SEC. 4. All writs of ne exeat shall be returnable into the circuit court of the proper county; and when granted by a judge in vacation, may be issued under the hand of the judge; or the judge may Where returnable,

* NOTE. See act of Feb. 11, 1835, title "Chancery."

direct the clerk of the said circuit court to issue the said writ, and to take bond of the complainant as is above required.

*The writ
what to
contain.*

SEC. 5. The writ of *ne exeat* shall contain a summons for the defendant to appear in the circuit court and answer to the said petition or bill, and upon the same being served upon the said defendant, he shall give bond with surety, in the sum endorsed on such writ, conditioned that he will not depart the state without leave of the said court, and that he will render himself in execution to answer any judgment or decree, which the said court may render against him; and in default of giving such security, he may be committed to jail as in other cases, for the want of bail; no temporary departure of the defendant from the state shall be considered as a breach of the condition of the said bond, if he shall return before personal appearance shall be necessary to answer or perform any judgment, order, or decree of the said court.

*Surety may
surrender
defendant.*

SEC. 6. The surety in any bond for the defendant as aforesaid, may at any time before the said bond shall be forfeited, surrender the said defendant in exoneration of himself in the same manner that bail may surrender their principal, and obtain the same discharge.

SEC. 7. On the return of the writ of *ne exeat*, if the same shall have been duly served, the court shall proceed therein as in other cases in chancery, if the matters alleged in said bill be purely of an equitable character, and the time of performance of the duty or obligation of the defendant has expired, if not, then the proceedings shall be stayed until it has expired; but the court may nevertheless proceed to determine whether the said writ ought not to be quashed or set aside.

SEC. 8. The supreme and circuit courts in term time, and any judge thereof in vacation, shall have power to grant writs of *ne exeat* and injunction. No writ of injunction shall be granted to stay proceedings under a judgment obtained before a justice of the peace for a sum not exceeding twenty dollars, besides the costs.

*Injunctions
&c.*

SEC. 9. When an injunction shall be granted by the supreme court or a judge thereof, it shall be made returnable into the circuit of the proper county.

*Proceed-
ings on in-
junctions.*

SEC. 10. Where an injunction shall be granted to stay a suit or judgment at law, the proceedings shall be had in the county where the judgment was obtained, or the suit is pending; and the writ of subpoena may be sent in the first instance into any county within this state where the defendant resides.

*Not grant-
ed, &c.*

SEC. 11. No injunction shall be granted to stay any judgment at law, for a greater sum than the complainant shall shew himself equitable not bound to pay, and so much as shall be sufficient to cover costs; every injunction when granted, shall operate as a release of all errors in the proceedings at law, that are prayed to be enjoyed. No injunction shall be issued unless the complainant shall have previously executed a bond with sufficient surety to the defendant, approved by the court or judge granting such injunction, and filed with the clerk in double the sum, directed to be enjoined, conditioned for the payment of all money and costs due, or to be due to the plaintiff in the action at law; and also all such costs and damages as shall be awarded against the complainant, in

case the injunction shall be dissolved, or such bond may be entered into before the clerk of the circuit court of the county, where the writ is required to be issued, the court or judge granting the injunction, having first approved the security. If the injunction be dissolved in the whole or in part, the complainant shall pay, exclusive of legal interest and costs, such damages as the court shall award, not exceeding ten per centum, on such part as may be released from the injunction; and the clerk shall issue execution for the same, when he issues execution upon such judgment.

SEC. 12. If any person against whom a writ of injunction shall be issued, shall after the service thereof be guilty of disobedience to, and breach of the said injunction, it shall be lawful for the judge granting the same, or if the same were granted in open court, then for any judge of that court in vacation to issue an attachment against the said person for a contempt, upon his being brought before the said judge, unless he shall disprove or purge the said contempt, the said judge may, in his discretion, commit him to jail, until the sitting of the court, in which the said injunction is pending, or take bail for his appearance in the said court at the next term thereof, to answer for the said contempt, and to abide the order of the court thereon.

*Breach of
injunction.*

SEC. 13. Upon the filing of an answer, it shall be in order at any time in term, to move for the dissolution of the injunction; and upon such motion it shall be lawful for the parties to introduce testimony to support the bill and answer; the court shall decide such motion upon the weight of testimony, without being bound to take the answer as absolutely true. If, after such dissolution is moved for, the plaintiff in the bill will satisfy the court by his own affidavit, or the affidavit of any disinterested person, that the answer, or any material part thereof, (to be specified in such affidavit,) is untrue, and that he has witnesses whose testimony he believes he can procure by the next term of the court, who will disprove the said answer, or such material part thereof as shall be specified as aforesaid, and that he has had no opportunity to procure such testimony, since the coming in of the answer, it shall be lawful for the court to grant a continuance of the said motion, until the next term. The testimony to be heard on such motions, aside from the bill and answer, shall be by depositions in writing, taken as in other cases in chancery proceedings, except the affidavits which may have been filed with the bill or answer, which may be read on such motion as heretofore; and the depositions taken to dissolve an injunction, may be read on the final hearing of the cause in which they have been taken.

*Proceed-
ings after
answer
filed.*

SEC. 14. All acts and parts of acts coming within the intent, spirit, and meaning of this act, and the objects and proceedings to which it relates, and heretofore in force in this state, are hereby repealed. No proceedings, however, had, or rights secured under them, shall be in any way impeded or impaired, but may be prosecuted and enforced as if this act had not taken effect. This act to take effect on the first day of June next.

*Acts re-
pealed.*

APPROVED, Jan. 22, 1827.

NOTARIES PUBLIC.

AN ACT for the appointment of Notaries Public.

In force June 1, 1829.

Notaries public to be appointed.

Term of service.

Their duty. In relation to notes, &c To give notice of protest.

To keep a record.

Which shall be evidence.

To serve notice personally. On persons living within one mile. And to forward to others.

To give bond.

How sued upon.

Notaries hereafter appointed.

Acts repealed.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the governor of the state, by and with the advice and consent of the senate, shall appoint and commission one notary public in each county in this state, except in those counties where there is one already in office, who shall hold his office during good behaviour.

SEC. 2. It shall be the duty of each and every notary public in this state, whenever any bill of exchange, promissory note, or other written instrument, shall be by him protested for non-acceptance, or non-payment, to give notice in writing thereof to the maker, and to each and every endorser, of any bill of exchange, and to the maker or makers of, and each and every security or endorser of any promissory note, or other written instrument, on the same day the said protest is made, or within forty-eight hours from the time of such protest.

SEC. 3. It shall be the duty of each and every notary public, to keep a correct record of all such notices and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record shall, at all times, be competent evidence to prove such notice, in any trial, before any court of this state, where proof of such notice may become requisite.

SEC. 4. It shall be the duty of each and every notary public personally to serve the notice upon the person or persons protested against, provided he or they reside in the town where such protest was made, or within one mile thereof; but if such person or persons reside more than one mile from such town, then the said notice may be forwarded by mail, or other safe conveyance.

SEC. 5. It shall be the duty of the governor to take bond, with sufficient security, from each notary public, before he enters on the duties of his office, in the sum of five hundred dollars, conditioned for the due and faithful performance of the duties of his office, which bond shall be filed in the office of the secretary of state, and if forfeited, suit may be instituted thereon, for the use of the party injured by such forfeiture.

SEC. 6. Nothing herein contained shall be so construed as to remove from office any notary public now in office in this state. The act, entitled "An act for the appointment of notaries public," approved, Feb. 22, 1819; and the act, entitled "An act to amend an act for the appointment of notaries public," approved, Feb. 10, 1823, be, and the same are hereby repealed. This act to be in force from and after the first day of June next.

APPROVED, Dec. 30, 1828.

AN ACT to amend an act, entitled "An act for the appointment of Notaries Public," approved, February 2, 1819. *In force Jan. 12, 1833.*

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That it shall be the duty of the governor, by and with the consent of the senate, to appoint in counties, where the same may be made to appear necessary, an additional notary public, whose duties and term of service shall be the same as are now regulated by law, by the act to which this is an amendment: *Provided,* that any application for such additional notary public, shall have at least the signatures of fifty voters of the county where such appointment is requested to be made: *And provided further,* that there shall not be more than one notary public in the same precinct in any county.

APPROVED, January 12, 1833.

OATHS AND AFFIRMATIONS.

AN ACT in addition to the act concerning Oaths and Affirmations. *In force Feb. 9, 1831.*

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That every notary public now appointed, or hereafter to be appointed in this state, is hereby empowered to administer oaths and affirmations. And all oaths, affirmations, affidavits, and depositions so administered or taken, shall subject any person who shall so swear or affirm falsely, knowing the same to be false, in any matter material to any issue or point in question, to the pains and penalties inflicted by law, for the time being, on persons convicted of wilful and corrupt perjury. This act to take effect from and after its passage.

APPROVED, Feb. 9, 1831.

AN ACT concerning Oaths and Affirmations. *In force Dec. 26, 1826.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That whenever any person shall be required to take an oath before he enters upon the discharge of any office, place, or business, or on any other lawful occasion, and such person shall declare that he or she has conscientious scruples about the present mode of administering oaths, by laying the hand on, and kissing the gospels, it shall be lawful for any person empowered to administer the oath, to administer it in the following form, to wit: the person swearing shall, with his or

Manner of oath. her hand uplifted, swear by the ever living God; and shall not be compelled to lay the hand on, or kiss the gospels. And oaths so administered, shall be equally effectual, and subject such persons to the like pains and penalties for wilful and corrupt perjury, as oaths administered in the usual form.

Subject to same penalties as in other cases. **SEC. 2.** Whenever any person required to take or subscribe an oath as aforesaid, and in all cases where an oath is upon any lawful occasion to be administered, and such person shall have conscientious scruples against taking an oath, he or she shall be admitted instead of taking an oath, to make his or her solemn affirmation or declaration in the following form, to wit: "You do solemnly, sincerely, and truly declare and affirm;" which solemn affirmation or declaration shall be equally valid, as if such person had taken an oath in the usual form: and every person guilty of falsely and corruptly declaring as aforesaid, shall incur and suffer the like pains and penalties as are, or shall be inflicted, on persons convicted of wilful and corrupt perjury.

Such persons. **SEC. 3.** All courts now established, or hereafter to be established, and each judge, justice, and clerk thereof, and all justices of the peace shall, respectively, have power to administer oaths and affirmations to witnesses and others, concerning any thing depending, or proceeding commenced, or to be commenced before them, respectively; and the said courts, the judges, justices, and clerks thereof, within their respective districts, circuits or counties, and the justices of the peace within their counties, shall respectively have power to administer all oaths of office, and other oaths required to be taken by any person before entering upon the discharge of the duties of any office, appointment, place, or business, or any other lawful occasion, and to take affidavits and depositions concerning any matter or thing, process, or proceeding, depending or to be commenced in any court, or before any justice of the peace, or on any occasion wherein such affidavits or depositions are authorized or required by law to be taken. And all oaths, affirmations, affidavits, and depositions so administered or taken, shall subject any person who shall so swear or affirm, wilfully and falsely, in matter material to any issue or point in question, to the like pains and penalties inflicted by law, for the time being, on persons convicted of wilful and corrupt perjury.

May affirm. **SEC. 4.** Be it further enacted, that all joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

Penalty for corruptly affirming, &c. **SEC. 5.** Be it further enacted, that no plea in abatement shall be received in any suit for partition, nor shall such suit abate by the death of any tenant.

Who may administer oaths, &c. APPROVED, January 13, 1821.

And upon what occasions. AN ACT regulating the mode of granting License to Clock Pedlers.

Penalty for false swearing. **SEC. 1.** Be it enacted by the people of the State of Illinois, represented in the General Assembly, That no auctioneer, vender, pedlar or other person shall hereafter be permitted to auctioneer, vend, peddle, sell, lease, hire, or traffic at public auction, or private sale, any clock, wooden, metal or composition, without first having obtained from the clerk of the county commissioners' court of the county in which he so vends, leases, hires, sells or peddles the same, a license for so doing, for which he shall first pay into the county treasury of the county the sum of fifty dollars, which license, when so granted, shall authorize the person therein named, to sell, vend, peddle, lease, hire, or traffic in the county only where such license may have been obtained, for the term of three months from the time of granting such license.

Joint tenants and tenants in common compellable to make partition. **SEC. 2.** Should any person or persons attempt to sell, hire, lease, traffic or vend any clock, or clocks, to any person whatever, without first having obtained a license as aforesaid, and without first

SEC. 3. Be it further enacted, that for assuming and exercising exclusive ownership over, or taking away, destroying, lessening in value, or otherwise injuring or abusing the thing held in joint tenancy, tenancy in common, or parcenary, the party aggrieved shall have his action of trespass or trover for the injury, in the same way as if such joint tenancy, &c. did not exist.

SEC. 4. Be it further enacted, that all joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

either in their own rights, or in the right of their wives, may be compelled to make partition between them of such lands, tenements, or hereditaments as they now hold, or hereafter shall hold, as joint tenants or tenants in common: *Provided, however,* that no such partition, between joint tenants or tenants in common, who hold or shall hold estates for life or years, with others holding equal or greater estate, shall prejudice any entitled to the reversion or remainder, after the death of the tenants for life, or after the expiration of the years.

SEC. 2. Be it further enacted, that if partition be not made between joint tenants, the parts of those who die first shall not accrue to the survivor or survivors; but descend or pass by devise, and shall be subject to debts, dower, charges, &c. or transmissible to executors or administrators, and be considered, to every intent and purpose, in the same view as if such deceased joint tenants had been tenants in common.

SEC. 3. Be it further enacted, that for assuming and exercising exclusive ownership over, or taking away, destroying, lessening in value, or otherwise injuring or abusing the thing held in joint tenancy, tenancy in common, or parcenary, the party aggrieved shall have his action of trespass or trover for the injury, in the same way as if such joint tenancy, &c. did not exist.

SEC. 4. Be it further enacted, that all joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

SEC. 5. Be it further enacted, that no plea in abatement shall be received in any suit for partition, nor shall such suit abate by the death of any tenant.

APPROVED, January 13, 1821.

AN ACT regulating the mode of granting License to Clock Pedlers.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That no auctioneer, vender, pedlar or other person shall hereafter be permitted to auctioneer, vend, peddle, sell, lease, hire, or traffic at public auction, or private sale, any clock, wooden, metal or composition, without first having obtained from the clerk of the county commissioners' court of the county in which he so vends, leases, hires, sells or peddles the same, a license for so doing, for which he shall first pay into the county treasury of the county the sum of fifty dollars, which license, when so granted, shall authorize the person therein named, to sell, vend, peddle, lease, hire, or traffic in the county only where such license may have been obtained, for the term of three months from the time of granting such license.

SEC. 2. Should any person or persons attempt to sell, hire, lease, traffic or vend any clock, or clocks, to any person whatever, without first having obtained a license as aforesaid, and without first

Proviso; partition so made not to prejudice any party entitled to the reversion or remainder.

The jus accrescendi or right of survivorship done away.

Parties who die first may descend by devise, be subject to debts, &c. same manner as if parties had been tenants in common.

A party holding in joint tenancy with another, liable to an action of trespass or trover. Joint obligations. Pleas in abatement not receivable in suits for partition.

In force Jan. 31, 1835.

Prohibited from selling without license.

Amount of license.

Penalty for selling without license.

PARTITIONS, JOINT RIGHTS, AND OBLIGATIONS.

AN ACT concerning Partitions and Joint Rights and Obligations.

Joint tenants and tenants in common compellable to make partition. **SEC. 1.** Be it enacted by the people of the State of Illinois, represented in the General Assembly, That all joint tenants or tenants in common, who now are, or hereafter shall be possessed of any estate of inheritance, or estates less than those of inheritance,

having exhibited the same to the person or persons he offers or attempts to sell, lease or traffic the same to, shall forfeit and pay the sum of fifty dollars for each offence, one half to the use of the informer, and the other half for the use of the county, which sum shall be recoverable before any justice of the peace in said county, and the offender liable to indictment as in other cases of misdemeanors: *Provided*, That nothing herein contained shall be construed to prevent citizens of this State from vending, leasing, or hiring any clock in the common way of deal, such citizens not being obviously pedlers in such traffic.

Proviso.

Duty of county officers in relation thereto.

SEC. 3. It shall be the duty of the county commissioners, sheriffs, coroners, justices of the peace, constables and clerks of the several courts in this State, and lawful for any other person in case of their neglect, to cause all persons who shall violate the provisions of this act, to be sued for the aforesaid penalties, and the suit or suits caused to be prosecuted to effect, and bail may be required in such cases without affidavit, if the court or justice in their discretion shall deem the same necessary to secure the county in the ultimate payment of any such penalty. So much of the act, entitled "An act requiring merchants, auctioneers, pedlers, and others engaged in the sale of goods, wares, and merchandize in this State, to procure a license for that purpose, under the penalties therein prescribed," approved, February 6th, 1831, as relates to clock pedlers, be, and the same is hereby repealed.

Certificate. This bill having remained with the Council of Revision ten days, Sundays excepted, and the General Assembly being in session, it has become a law, this 31st day of January, 1835.

A. P. FIELD, *Secretary of State.*

PENITENTIARY.

Part of this act in force Feb. 15, 1831.

Residue on the completion of the penitentiary.

Convicts may be confined in penitentiary.

AN ACT to amend an act entitled "An act relative to criminal Jurisprudence," approved January 6, 1827, and to provide for the regulation and government of the Penitentiary.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That criminal convicts sentenced to hard labor or solitary imprisonment, or hard labor and solitary imprisonment, shall and may be imprisoned, restrained, and employed in, and within the precincts of the penitentiary, situate at, or near the town of Alton, in the county of Madison; and the court before whom such conviction may be, are hereby authorized and empowered, by their order on the sheriff of the county where such conviction is had, to cause all such convicts, as soon as conveniently may be after sentence, to be removed from any jail of such county, to the said penitentiary. And the sheriff of the county in which such conviction may be had, is hereby authorized and required by himself, or his deputies, to remove such convicts to the

penitentiary accordingly, and deliver the same into the custody of the warden thereof; and the said sheriff and his deputies shall have all the power of sheriff and deputies, in all counties in this state, which he, they, or any of them may enter into, or pass through, for the purpose of conveying such convicts to the penitentiary aforesaid: and it shall be the duty of the clerk of the court, before whom such conviction shall be had, to make out and deliver to the sheriff of the county, a copy of said conviction and judgment and order thereon, who shall leave an attested copy thereof, with a copy of his return thereon, with the warden of the said penitentiary. And the said sheriff shall make due return to the court of their said order.

SEC. 10. The business and dealings of the penitentiary shall be transacted by, and in the proper name of, the warden; and each warden, and his successors in office shall, in his proper name, as warden of said penitentiary, be capable of suing and being sued, in all matters concerning or arising out of the business, rights, or dealings of the said penitentiary; and it shall be the duty of the said warden to enforce the collection of the debts due the institution, as soon, and with as little expense as possible.

All business be in name of warden.

SEC. 12. Any moneys which have been, or hereafter shall be appropriated for the building, enlarging, or improving said penitentiary, shall be applied under the direction of the inspectors; and the said inspectors are authorized to contract for the building of a department for the warden. And so much of an act, entitled "An act concerning the saline reserves, a penitentiary, and the improvement of certain navigable streams," as provides for the appointment of commissioners of the penitentiary, be, and the same is hereby repealed; and the inspectors shall have the same power under said act, as said commissioners had.

Inspectors to apply all appropriations.

SEC. 13. The said warden and other officers, agents, and servants, shall each of them have power to order any convict to solitary confinement, for misbehavior, refractory conduct, idleness, negligence in performing their daily task, impertinent or improper language, or breach of any of the rules and regulations; and shall immediately report the same to the said warden, and the warden shall punish such convict therefor, by solitary imprisonment, for any term not exceeding thirty days, or may discharge the said convict from the imprisonment ordered by the said warden, officers, agents, or servants.

Convicts may be punished for misconduct.

SEC. 14. The said warden, officers, or agents, shall have power, each of them, to suppress all risings, rebellions, or other refractory conduct of the said convicts, and for that purpose they, and each of them, shall have power to use all necessary force and violence toward such convicts, to accomplish the same.

Wardens and agents may suppress mutiny, &c.

SEC. 15. The said warden, officers, agents, and servants, shall constantly reside at the penitentiary, day and night, unless liberty of absence shall be allowed to the warden by the governor, or to such officers, agents, and servants by the warden. In case of the death, resignation, or absence of the warden, such one of the said officers as shall be previously designated by the governor, shall perform all the duties of warden, until the governor shall fill the vacancy, or until the warden shall return. The warden, officers,

Warden and agents to reside at penitentiary.

agents, and servants shall not be liable to serve on juries, perform militia duty, or work on roads.

Sheriff's duties.

SEC. 17. It shall be the duty of the sheriff of the county where the conviction was had, to employ a sufficient force to guard all convicts to the penitentiary; and the sheriff shall be responsible for the safe delivery of such convicts. A failure to deliver the same shall be a breach of duty in the official conduct of such sheriff, for which he may be indicted in any county as in other cases of misconduct in office. The said sheriff shall be allowed thirty cents for each mile necessarily travelled in going to the penitentiary with each convict, to be paid out of the state treasury, on the warrant of the auditor, which shall be issued in favor of such sheriff, in full compensation for all charges and expenses of himself, and all guards, and all other expenses whatever: *Provided*, that in extraordinary cases, the county commissioners' court of the proper county shall make such additional allowance as it may deem right and just; which additional allowance shall be discharged as is herein provided.

County court.

APPROVED, Feb. 15, 1831.

AN ACT to regulate the Penitentiary.

In force Feb. 19, 1833.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the governor, by and with the advice and consent of the senate, shall appoint three inspectors of the penitentiary, who shall hold their offices for the term of two years, and until others are in like manner appointed and qualified.

Governor to appoint inspectors.

SEC. 2. The said inspectors or a majority of them shall have power, and it shall be their duty, from time to time, to examine and enquire into all matters connected with the government, discipline, and police of the penitentiary at Alton, which is committed to their care; the punishment and employment of the prisoners therein confined, the monied concerns and contracts for work to complete the penitentiary, and the purchase and sale of the articles provided for the said penitentiary, or sold on the account thereof: they shall have power to make rules and regulations for the management of the said penitentiary, and the officers therein employed, and to require the warden from time to time to render a minute and full account of all the expenditures, with the receipts and other transactions of, and concerning the said penitentiary.

Their powers and duties.

SEC. 3. The said inspectors shall keep regular minutes of their proceedings, and shall, at the meeting of each general assembly, make a full report of the situation of the said penitentiary, and all things connected with the management of the same, the number of prisoners confined therein, the accounts, both of receipts and expenditures, and all proceedings by them as inspectors of the penitentiary for the preceding two years.

Shall keep minutes of their proceedings.

SEC. 4. The said inspectors shall have power to appoint all in-

ferior officers and agents in the said penitentiary, and to contract for the building a substantial wall around the said penitentiary and work shops within the same, of such size and dimensions as they think most advantageous and convenient to further the ends and objects contemplated by the erection of the said penitentiary: *Provided*, that the building authorized by this act, shall not at any time exceed the amount of money which may be appropriated for that purpose.

Shall have power to appoint inferior officers, and to contract for building walls &c.

SEC. 5. The said inspectors shall be and they are hereby authorized to lay off into lots, not exceeding one hundred and fifty feet back, by twenty-five feet front, three acres on the eastern side of the lot of land on which the penitentiary is situated, and to make such streets as they may deem necessary to add to the value of said lots, and to sell the said lots at public vendue, to the highest bidder, on a credit of six, twelve, and eighteen months, the purchaser giving bond, with approved security, and a lien on the lots for the purchase money: *Provided*, that William Russel, the donor of said land, give his consent to such sale.

Shall lay off lots.

SEC. 6. The proceeds of the sales of said lots shall be applied under the direction of the inspectors, to the building of the wall and work shops mentioned in the fourth section of this act.

Proceeds of said lots.

SEC. 7. It shall be the duty of the warden of said penitentiary, to receive such persons as shall be convicted, sentenced, and ordered to imprisonment, and them safely keep in the said penitentiary pursuant to their sentence, until their time shall expire, or they be otherwise discharged by due course of law; to exercise general supervision over the government and police of the said penitentiary, and the prisoners therein confined, under the direction of the inspectors; the said warden or his authorized agent, shall be required to examine daily into the state of the penitentiary, and the health, conduct, and safe keeping of the prisoners; to superintend the manufactory, and mechanic's business that may be carried on in said penitentiary, to receive the articles manufactured and dispose of the same for the benefit of the state, and to purchase all necessary and proper supplies for the use of the penitentiary.

Duty of warden.

SEC. 8. The warden shall be treasurer of the said penitentiary, and shall keep the books and accounts belonging to the same; and shall make a monthly report to the inspectors of all the material transactions which may be connected with the penitentiary; the said warden, before he enters on the duties of his office, shall take an oath for the faithful discharge of his duties as warden, and shall also give a bond to the governor, for the use of the people of the state of Illinois, in the penal sum of ten thousand dollars, with sufficient security, to be approved by the governor, conditioned for the faithful discharge of the duties of his office.

He shall be treasurer.

Shall take an oath.

Shall give bond.

SEC. 9. The said inspectors shall each receive the sum of two dollars per day, for each day they may be necessarily employed in the discharge of the duties of their office: *Provided*, that the same shall not exceed fifty dollars in the course of any one year, and the warden shall receive an annual salary of three hundred dollars, to be paid out of any money in the treasury not otherwise appropriated, on the warrant of the auditor, as other public officers are paid.

Compensation of inspectors.

Salary of wardens.

Compensation of the present inspectors.

SEC. 10. The present inspectors shall receive for their services for the last two years, the following sums, to wit: John Reynolds, seventy-four dollars; Samuel Judy, fifty-eight dollars; George Smith, fifty-eight dollars; James Reynolds, seventy-four dollars; and Charles Howard, thirty dollars; to be paid out of any money in the treasury not otherwise appropriated.

This act to be in force from and after its passage.

APPROVED, Feb. 19, 1833.

In force Feb. 9, 1835.

AN ACT to amend an act, entitled "An act to regulate the Penitentiary," approved, February 19, 1833.

Warden to be elected.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That there shall be elected by joint vote of the two Houses of the General Assembly, at their present session, and at every succeeding session hereafter, a Warden of the Penitentiary, who shall be commissioned by the Governor, and continue in office for the term of two years, and until his successor shall be appointed and qualified.

His duties. Salary.

SEC. 2. The duties of said Warden shall be the same that are now provided by law for the Warden heretofore appointed, and he shall receive an annual salary of three hundred dollars to be paid to him in the manner provided by the 9th section of the act to which this is an amendment, and the said Warden shall be allowed one hundred dollars per annum in consideration of the deterioration in value of the house formerly used and occupied by the said Warden, by the erection of a wall.

Certain power conferred on the inspectors continued to sell penitentiary lot.

SEC. 3. The power conferred upon the Inspectors of the Penitentiary by the fifth section of the act to which this is an amendment, to lay off into lots, and sell three acres of the lot of land upon which the Penitentiary is situated, is hereby continued to and in said Inspectors: *Provided,* That such sale shall take place in the month of April next, and that four weeks public notice of the time and place thereof shall be given by said Inspectors, by publication in the newspaper printed nearest to the premises: *And provided further,* That one fourth of the purchase money shall be paid in hand, and the balance in six, twelve, and eighteen months, the purchaser in all cases, giving bond and approved security to said Inspectors for the payment of said balance of the purchase money, and the said Inspectors executing to said purchasers, title bonds for the lots respectively purchased by them, and upon the payment in full of the purchase money, executing to them general warranty deeds.

Proceeds of sale, how appropriated.

SEC. 4. One third part of the proceeds arising from the sale of said lots, shall be applied, under the direction of the board of Trustees of the town of Alton, in grading and improving State street, and other streets in said town west of the Piassa creek, and building and repairing bridges over said creek, where Second street and Fourth street crosses the same, and the balance of the

proceeds thus arising, shall be applied, under the direction of the Inspectors of the Penitentiary, to completing the guard-wall around the Penitentiary, and if necessary, to building additional workshops.

SEC. 5. All acts and parts of acts coming within the meaning and purview of this act, are hereby repealed.

This act to be in force and take effect from and after its passage.

APPROVED, Feb. 9, 1835.

AN ACT to amend the several acts in relation to the Penitentiary In force Jan. 18, 1836.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the Inspectors and Warden of the Penitentiary to deposit in the branch of the State Bank of Illinois at Alton, all moneys in their hands belonging to the Penitentiary fund; also all notes, bonds, and other evidence of indebtedness to the said fund, within ten days after being furnished with a copy of this act; and the Governor is required to furnish each of said Inspectors and Warden with such copy immediately after its passage; and hereafter the said Inspectors and Warden shall deposit all moneys which they may receive, belonging to said fund, in said branch bank; also, all notes and bonds and other evidences of indebtedness to said fund, immediately upon the receipt of any such money, notes, bonds, or other evidences of indebtedness; which shall be at all times subject to the Warden and Inspectors, when wanted for use, as now provided by law.

Deposites of money and papers to be made in the Alton branch of State Bank

This act to be in force from and after the passage.

APPROVED, Jan. 18, 1836.

AN ACT in relation to the Penitentiary.

In force 21st July, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the first and second sections of an act passed February 9th, 1837, entitled "an act to amend an act to regulate the Penitentiary," approved February 19th, 1833, be and the same are hereby repealed.

Law repealed.

SEC. 2. That all the power and authority hereby conferred on the Warden of the Penitentiary, is hereby vested in the Inspectors thereof; who are authorized and empowered to appoint a superintendent of the Penitentiary, to superintend and manage the affairs of the said penitentiary, or to farm out the convicts to some individual or individuals, as they in their judgment may think will best advance the interest of the state.

Powers of inspectors of Penitentiary.

In case of failure to defray expense.

SEC. 3. That the Inspectors of the Penitentiary, on a failure of realizing from the labor of the convicts confined in the said Penitentiary, a sum sufficient to defray the expenses of a superintendent, or in case they farm out the convicts to some individual or individuals at less than sufficient to defray the incidental expenses, and support the convicts, they shall have power to draw on the auditor of public accounts for the sum not exceeding eight hundred dollars.

SEC. 4. This act shall take effect from and after its passage, and be in force till the close of the next session of the General Assembly.

APPROVED, 21st July, 1837.

In force June 1, 1827.

AN ACT requiring persons who petition the General Assembly, to give certain notices before such petitions are finally acted upon.

Four weeks notice to be given.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That no petition or petitions, shall, after the end of the present session of the general assembly, be finally acted upon, which prays for a change of county lines, the erection of new counties, the removal of the seat of justice of any county, or which may affect the rights and interests of any person or persons, unless the petitioner or petitioners shall have given four weeks notice in some newspaper printed in this state, and a copy of said advertisement shall be put up on the court house door in said county, at least two months before such petition or petitions shall be presented to the general assembly.

SEC. 2. The act entitled "An act relative to the formation and division of new counties," is hereby repealed.

No county to be divided unless on petition of a majority of voters.

SEC. 3. That no county shall hereafter be divided, or county seat removed, unless it be done on a petition signed by a majority of the qualified voters of said county, so to be divided, or the county seat removed, which petition shall particularly describe the line or lines of division or curtailment so proposed, and the particular place to which such county seat is proposed to be removed.

This act to be in force from and after the first day of June next.

APPROVED, Dec. 26, 1826.

POOR

In force March 1, 1833.

AN ACT for the relief of the Poor.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the county commis-

sioners' court of the several counties of this state, shall be, and they are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

County commissioners to superintend poor. Persons afflicted with bodily infirmities, by whom to be supported.

SEC. 2. Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, shall be supported by the father, grandfather, mother, grand-mother, children, grand-children, brothers or sisters, of such poor person, if they, or either of them be of sufficient ability. And every person who shall fail or refuse to support his or her father, grand-father, mother, grand-mother, child or grand-child, sister or brother, when directed by the county commissioners' court of the county where such poor person shall be found, whether such relative reside in the same county or not, shall forfeit and pay to the said county commissioners for the use of the poor of their county, the sum of five dollars for every month for which they or either of them shall fail or refuse, to be recovered in the name of the county commissioners' court for the use of the poor, as aforesaid, before any justice of the peace, or any other court having jurisdiction: *Provided*, that when any persons become paupers from intemperance or other bad conduct, they shall not be entitled to support from any relation except parent or child.

Amended: See acts of 1835.

Proviso.

SEC. 3. The children shall first be called on to support their parents, if there be children of sufficient ability, and if there be none of sufficient ability, the parents of such poor person shall be next called on, and if there be no parents or children, the brothers and sisters of such poor person shall next be called on, and if there be no brothers or sisters, the grand-children of such poor person, shall next be called on, and then the grand-parents: *Provided*, married females, whilst their husbands live, shall not be liable to a suit.

What relatives shall be first called on.

SEC. 4. When any such poor person shall not have any such relatives in any county in this state, as are named in the preceding sections, or such relative shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as his or her case may require, out of the county treasury; and the county commissioners may either make contracts for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

When paupers shall not have relations.

SEC. 5. When any minor shall become, or likely to become chargeable to the county, either because of being an orphan, or because the parents or other relatives as aforesaid are unable, or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county by written indenture, which shall bind such minor to serve as an apprentice, and shall in all respects be to the tenor and effect as required in the act concerning apprentices.

Minor. See act of March 4, 1837, under head of "Minors, Orphans," &c.

SEC. 6. When any non-resident or any other person not coming within the definition of a pauper, shall fall sick or die in any county of this state, not having money or property to pay his board, nursing, and medical aid, it shall be the duty of the overseers of the

Non-resident, &c. falling sick or dying.

poor of the proper township, or if there be none, then of the nearest county commissioner of the county, upon complaint being made, to give or order to be given such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said overseers or county commissioner shall give, or order to be given to such person a decent burial; and the said overseers or county commissioner shall make such allowance for board, nursing, medical aid, or burial expenses as they shall deem just and equitable; which allowance shall be laid before the county commissioners' court, and the said court shall allow either the whole or such reasonable and just part thereof as ought to be allowed, and order the same to be paid out of the county treasury.

Acts repealed.

SEC. 7. All acts and parts of acts heretofore passed for the relief of the poor are hereby repealed. But no right accruing or accrued before this act takes effect, shall be prejudiced by such repeal. This act to take effect from and after its passage.

APPROVED, March 1, 1833.

In force Feb. 13, 1835.

AN ACT to amend the act, entitled "An act for the relief of the poor," approved, March 1, 1833.

Proof of twelve months residence in the county necessary to obtain relief.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That when application is made by any pauper, or paupers, to the county commissioners' court of any county in this State, for relief, it shall be necessary for said county commissioner's court to require of said pauper or paupers, satisfactory evidence that he, she or they, have been residents of said county for twelve months immediately preceding the day upon which such application is made.

When non-residents, how dealt with.

SEC. 2. That when on application made by any pauper or paupers, to the county commissioners' court as aforesaid, it shall appear to the satisfaction of said court, that the person or persons so applying for relief, have resided in said county agreeably to the provisions of the first section of this act, he, she or they, shall be entitled to all the relief provided by the act to which this is an amendment; but if on the contrary, it shall appear to the satisfaction of said county commissioners' court, that said pauper or paupers, shall not have been residents of said county agreeably to the provisions of the first section of this act, they shall proceed to remove from their county, at the expense of said county, said pauper or paupers to the county or State where said pauper or paupers may have had his, her or their last place of residence, or may, if they think best, issue a notice directed to some constable of the county, which notice said constable shall serve forthwith on said pauper or paupers, requiring him, her or them, to depart said county forthwith; and after so serving said notice, by reading the same to said pauper or paupers, said constable shall, within five days thereafter, return the same to the clerk of the county commissioners' court

issuing the same, noting the time and manner of serving the same thereon.

SEC. 3. After service of such notice as aforesaid, no pauper or paupers shall be entitled to relief from such county, any law or custom to the contrary notwithstanding.

SEC. 4. The county commissioners' court of any county in this State, may, if they see proper, cause to be built or procured, in their respective counties, convenient workhouses for the accommodation and employment of such paupers as may from time to time become a county charge; said workhouses and paupers to be under such rules and regulations as said county commissioners' court may deem proper and just; and that if any person shall bring and leave any pauper or paupers in any county in this State, wherein such pauper is not lawfully settled, knowing him or them to be paupers, he shall forfeit and pay the sum of one hundred dollars for every such offence, to be sued for and recovered by, and to the use of such county, by action of debt, before any justice of the peace in the proper county.

County commissioners authorized to erect work houses

APPROVED, February 13, 1835.

PROMISSORY NOTES, &c.

AN ACT relative to Promissory Notes, Bonds, Due-bills, and other instruments in writing, and making them assignable. *In force, July 1, 1827.*

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all promissory notes, bonds, due-bills, and other instruments in writing, made, or to be made, by any person or persons, body politic or corporate, whereby, such person or persons promise or agree to pay any sum of money, or articles of personal property, or any sum of money in personal property, or acknowledge any sum of money or article of personal property to be due to any other person or persons, shall be taken to be due and payable, and the sum of money or article of personal property therein mentioned, shall by virtue thereof be due and payable to the person or persons to whom the said note, bond, bill, or other instrument in writing is made. And any such note, bond, bill, or other instrument in writing, made payable to any person or persons, shall be assignable by endorsement thereon, under the hand or hands of such person or persons, and of his, her, or their assignee or assignees, in the same manner as bills of exchange are, so as absolutely to transfer and vest the property thereof in each and every assignee or assignees successively. And any assignee or assignees to whom such sum of money or personal property is by such endorsement or endorsements made payable, or in case of the death of such assignee or assignees, his, her, or their executors or administrators may in his, her, or their own name or names, institute and maintain the same kind of action for the recovery thereof against the person or persons who made and exe-

Obligation to pay.

Notes, &c. may be assigned.

cuted any such note, bond, bill, or other instrument in writing, or against his, her, or their heirs, executors, or administrators, as might have been maintained against him, her, or them, by the obligee or payee, in case the same had not been assigned; and in every such action in which judgment shall be given for the plaintiff or plaintiffs, he, she, or they shall recover his, her, or their damages and costs of suit, as in other cases: *Provided*, that the maker shall never be allowed to allege payment to the payee, made after notice of such assignment, as a defence against such assignee or assignees.

Assignor's liability.

SEC. 2. Every assignor or assignors, or his, her, or their heirs, executors, or administrators of every such note, bond, bill, or other instrument in writing, shall be liable to the action of the assignee or assignees thereof, or his, her, or their executors, or administrators, if such assignee or assignees shall have used due diligence by the institution and prosecution of a suit against the maker or makers of such assigned note, bond, bill, or other instrument of writing, or against his, her, or their heirs, executors, or administrators, for the recovery of the money, or property due thereon, or damages in lieu thereof: *Provided*, that if the institution of such suit would have been unavailing, or that the maker, or makers had absconded, or left the state, when such assigned note, bond, bill, or other instrument in writing became due, such assignee or assignees, or his, or her executors or administrators, may recover against the assignor or assignors, or against his or their heirs, executors, or administrators, as if due diligence by suit had been used.

Where due diligence has been used.

Effect of assignment after note becomes due.

SEC. 3. If any such note, bond, bill, or other instrument in writing, shall be endorsed after the day on which the money or property therein mentioned become due and payable, and the endorsee shall institute an action thereon against the maker and signer of the same, the defendant being maker and signer, shall be allowed to set up the same defence that he might have done, had the said action been instituted in the name, and for the use of the person or persons to whom the said note, bond, bill, or other instrument in writing was originally made due and payable.

Effect of assignment before note becomes due.

SEC. 4. If any such note, bond, bill, or other instrument of writing shall be endorsed before the day the money or property therein mentioned become due and payable, and the endorsee shall institute an action thereon, the defendant may give in evidence at the trial any money or property actually paid on the said note, bond, bill, or other instrument in writing, before the said note, bond, bill, or other instrument in writing was endorsed or assigned to the plaintiff, on proving that the plaintiff had sufficient notice of the said payment, before he or she accepted or received such endorsement.

May plead want of consideration.

SEC. 5. In any action commenced, or which may hereafter be commenced, in any court of law in this state, upon any note, bond, bill, or other instrument in writing for the payment of money or property, or the performance of covenants or conditions by the obligee or payee thereof, if such note, bond, bill or instrument in writing was made or entered into without a good or valuable consideration; or if the consideration upon which such note, bond, bill, or instrument in writing was made or entered into, has wholly

or in part failed, it shall be lawful for the defendant or defendants against whom such action shall have been commenced by such obligee or payee, to plead such want of consideration, or that the consideration has wholly, or in part failed; and if it shall appear that any such note, bond, bill, or instrument of writing was made or entered into without a good or valuable consideration, or that the consideration has wholly failed, the verdict shall be for the defendant; and if it shall appear that the consideration has failed in part, the plaintiff shall recover according to the equity of the case: *Pro-Provido*, that nothing in this section contained shall be construed to affect or impair the right of any *bona fide* assignee or assignees, of any instrument made assignable by this act, where such assignment was made before such instrument became due.

SEC. 6. If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded in bar to any action to be brought on any such instrument so obtained, whether such action be brought by the party committing such fraud or circumvention, or any assignee or assignees of such instrument. *Fraud pleaded in bar.*

SEC. 7. In all cases where any of the before mentioned instruments of writing are for the payment or delivery of personal property, other [than] money, and no particular place be specified in such instruments of writing for the payment or delivery thereof, it shall be lawful for the maker of any such instrument of writing to tender or cause to be tendered on the day mentioned in any such instrument, the personal property therein mentioned, at the place where the obligee or payee of any such instrument resided at the time of the execution thereof: *Provided, however*, if such personal property be too ponderous to be easily moved, or if the obligee or payee of such instrument had not at the time of the execution of such instrument of writing a known place of residence in the county where the maker or makers resided, then it shall be lawful to tender such personal property at the place where the maker or makers of such instrument resided at the time of the execution thereof. *Obligations for personal property. Tender, where to be made. Proviso. Tender.*

SEC. 8. A legal tender of any such personal property shall discharge the maker of any such instrument from all liability thereon; and the property thus tendered is hereby declared to be vested in and belong to the legal holder and owner of any such instrument of writing, and he may maintain an action for the recovery thereof, or for damages, if the possession be subsequently illegally withheld from him: *Provided, however*, if any such property so tendered shall be of a perishable nature, or shall require feeding or other sustentation, and the person owning and holding such instrument of writing be absent at the time of tendering the same, it shall be lawful for every person making such tender, to preserve, feed, or otherwise take care of the same; and he shall have a lien on such tendered property for his reasonable trouble and the expense of feeding or sustaining such property, until payment be made for such trouble and expense. *Effect of. Proviso.*

Acts repealed.

SEC. 9. The act, entitled "An act making promissory notes, bonds, bills, and writings obligatory negotiable," approved, February 6, 1819; and the act, entitled "An act to regulate the practice in certain cases," approved, February 24, 1821, shall be, and the same are hereby repealed: *Provided*, that the repeal thereof shall not affect any rights or defences acquired under said acts. This act to take effect from and after the first day of July next.

APPROVED, Jan. 3, 1827.

PRACTICE.

In force March 22, 1819.

AN ACT regulating the Practice in the Supreme and Circuit Courts of this State, and for other purposes.

Who shall be special bail.

SEC. 3. [Be it enacted by the people of the State of Illinois, represented in the General Assembly,] That no person shall be permitted to be special bail in any action, unless he be a householder and resident within this state, and of sufficient property, if the writ or process is sued out of the supreme court, or if it issue out of any circuit court, unless he be a householder of sufficient property, and resident in the county in which the court is held; and no counsellor or attorney at law, sheriff, under sheriff, bailiff, or other person concerned in the execution of process, shall be permitted to be special bail in any action.

In cases where tender has been made.

SEC. 11. That in all cases when a tender shall be made and full payment be offered, by discount or otherwise, in specie, as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterwards will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit.

Interpreters.

SEC. 12. Interpreters may be sworn truly to interpret when necessary.

Nonsuit.

SEC. 13. Every person desirous of suffering a nonsuit on trial, shall be barred therefrom unless he do so before the jury retire from the bar.

Where several counts, one of which is faulty.

SEC. 16. Where there are several counts, one of which is faulty, and entire damages are given, the verdict shall be good, but the defendant may apply to the court to instruct the jury to disregard such faulty counts.

Evidence.

SEC. 21. Papers read in evidence, though not under seal, may be carried from the bar by the jury.

When issue is taken on title only.

SEC. 22. After an issue joined in an ejectment on the title only, no exception of form or substance shall be taken to the declaration in any court whatsoever.

Judgment by confession.

SEC. 24. A judgment on confession shall be equal to a release of errors.

Writ of error, when to be brought.

SEC. 28. A writ of error shall not be brought after the expiration of five years from the passing of the judgment complained of; but when a person thinking himself aggrieved by any decree or

judgment that may be reversed in the supreme court, shall be an infant, *feme covert*, *non compos mentis*, or imprisoned when the same was passed, the time of such disability shall be excluded from the computation of the said five years.

SEC. 43. No declaration shall hereafter be considered necessary to be filed in any *scire facias* to revive a judgment, or foreclose a mortgage, in any court of record in this state, any law, usage, or custom to the contrary, in any wise, notwithstanding.

APPROVED, March 22, 1819.

*AN ACT concerning Practice in Courts of Law.

In force June 1, 1827.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the first process in all actions to be hereafter commenced in any of the circuit courts of this state, shall be a summons, except actions where special bail may be required: which summons shall be issued under the seal of the court, tested in the name of the presiding judge, dated on the day it shall be issued, and signed with the name of the clerk; and shall be directed to the sheriff, (or if he be interested in the suit,) to the coroner of the county in which the defendant, or defendants, or some or one of them reside or may be found; and shall be made returnable on the first day of the next circuit court in which the action may be commenced.

SEC. 2. It shall be the duty of the sheriff or coroner to serve all process of summons, or *capias*, when it shall be practicable, ten days before the return day thereof, and to make return of such process to the clerk who issued the same, by or on the return day, with an endorsement of his service, the time of serving it, and the amount of his fees: *Provided*, That when such process shall have been directed to a foreign county, the officer executing the same, may make return thereof by mail; and the clerk may charge the postage and tax the amount in his fee bill.

SEC. 3. If it shall not be in the power of such sheriff or coroner to serve such summons or *capias*, ten days before the return day thereof, he may execute the same at any time before or on the return day, but in such case the defendant or defendants shall be entitled to a continuance, and shall not be compelled to plead before the next succeeding term.

SEC. 4. Whenever it shall appear, by the return of the sheriff or coroner, that the defendant or defendants are not found, the clerk shall, at the request of the plaintiff, issue another summons, or *capias*, (as the case may be,) and so on, until service be had, and the defendant or defendants be summoned, or brought into

* See " *Ne exeat* ; " *Chancery* ; " *Dower* ; " *Partitions* ; " *Replevin* ; " *Detinue* ; " *Bail* ; " *Attachments* ; " *Forcible Entry and Detainer* . "

† Amended: See " *An Act concerning process* , " under the head of " *Courts* , " passed Feb. 25, 1837.

Service on one of the def'ts effect of.

court, and if such summons or capias be served on any one or more, but not on all of the defendants, the plaintiff or plaintiffs shall be at liberty to proceed to trial and judgment, in the same manner as if all the defendants were in court: and any judgment so obtained shall be valid against the defendant or defendants on whom the process had been served, and the plaintiff or plaintiffs may, at any time afterwards, have a summons in the nature of a *scire facias*, against the defendant or defendants not served with the first process as aforesaid, to cause him, her, or them to appear in the said court, and shew cause why he, she, or they should not be made a party to such judgment, and the court shall thereupon proceed to hear and determine the matter, in the same manner as if such defendant or defendants had been originally summoned or brought into court; and such defendant or defendants shall also be allowed the benefit of any payment which may have been made on the judgment before recovered, and the judgment of the court against the defendant or defendants in such case, shall be that the plaintiff or plaintiffs recover against such defendant or defendants, together with the defendant or defendants in the former judgment, the amount of his debt or damages as the case may be.

Scire facias against def'ts not served.

Proceeding thereon.

Judgment.

Officer not returning process, rule may be made.

Proceedings thereon.

Declaration when to be filed.

Docket, how kept.

SEC. 5. If any sheriff or coroner to whom any summons or capias shall be delivered, shall neglect or refuse to make return of the same, before or on the return day of such process, the plaintiff may enter a rule requiring said sheriff or coroner to make return of such process on a day to be fixed by the court, or to shew cause on that day, why he should not be attached, for a contempt of the court; and the plaintiff shall, thereupon, cause a written notice of such rule to be served on such sheriff or coroner, and if good and sufficient cause be not shewn to excuse such officer, the court shall adjudge him guilty of a contempt; and shall proceed to punish such officer as in other cases of contempt.

SEC. 6. If the plaintiff shall not file his declaration, together with a copy of the instrument of writing or account on which the action is brought, in case the same be brought on a written instrument or account ten days before the court at which the summons or capias is made returnable, the court, on motion of the defendant, shall continue the cause at the cost of the plaintiff, unless it shall appear that the suit was commenced within ten days of the sitting of the court, in which case the cause shall be continued without costs, unless the parties shall agree to have a trial, and if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment as in case of a nonsuit.

SEC. 7. The clerks of the circuit courts shall keep a docket of all the causes pending in their respective courts, in which shall be entered the names of the parties, the cause of action, and the name of the plaintiff's attorney, and he shall furnish the judge and bar at each term, with a copy of the same, in which all indictments and causes to which the people may be a party, shall be first set down, after which shall be set down all cases in law in order, according to the date of their commencement, and lastly, the suits in chancery: and the clerk shall also set and apportion the causes for as many days of the term as he may think necessary, or be directed by the

judge; and all subpoenas for witnesses shall be made returnable on the day on which the cause in which the witnesses are to be called, is set for trial.

SEC. 8. The clerks shall, from time to time, issue subpoenas for such witnesses as may be required by either party, returnable on the day for which the cause in which they are required to attend, is set for trial, and every clerk who shall refuse so to do, shall be fined, at the discretion of the court, in any sum not exceeding one hundred dollars.

Clerks to issue subpoenas.

SEC. 9. In all cases pending in any circuit court of this state, if both the parties shall agree, both matters of law and fact may be tried by the court.

SEC. 10. The several circuit courts shall have power, in any action pending before them, upon motion, and good and sufficient cause shewn, and reasonable notice thereof given, to require the parties or either of them, to produce books or writings in their possession or power, which contain evidence pertinent to the issue; and it shall be the duty of the defendant or defendants, in all cases where he, she, or they intend to prove, on the trial, any accounts or demands against the plaintiff or plaintiffs, to file with his plea a bill of the particular items of such accounts or demands, and no other accounts or demands shall be suffered to be proved by the jury.

Court may compel the production of books, &c. in evidence.

SEC. 11. On the appearance of the defendant or defendants, the court may allow such time to plead as may be deemed reasonable and necessary, and for want of appearance, may give judgment by default on calling the cause, except in cases where the process has not been served, or declaration filed, ten days before the term of the court; but all the causes shall be tried, or otherwise disposed of in the order they are placed on the docket, unless the court, for good and sufficient cause, shall otherwise direct. And whenever either party shall apply for the continuance of a cause on account of the absence of testimony, the motion shall be grounded on the affidavit of the party so applying, or his, her, or their authorized agent, shewing that due diligence has been used to obtain such testimony, or the want of time to obtain it; and also the name and residence of the witness or witnesses, and what particular fact or facts the party expects to prove by such witness or witnesses; and should the court be satisfied that such evidence would not be material on the trial of the cause, or if the opposite party will admit the fact or facts stated in the affidavit, the cause shall not be continued.

On appearance courts to give time to plead. Judgment by default.

Continuances when allowed.

SEC. 12. The defendant may plead as many matters of fact in several pleas as he may deem necessary for his defence, or may plead the general issue, and give notice in writing under the same, of the special matters intended to be relied on, for a defence, on the trial, under which notice, if adjudged by the court to be sufficiently clear and explicit, the defendant shall be permitted to give evidence of the facts therein stated, as if the same had been specially pleaded and issue taken thereon; but no persons shall be permitted to deny, on trial, the execution of any instrument in writing, whether sealed or not, upon which any action may have been brought, or which shall be pleaded or set up by way of de-

Def't may plead several pleas on the general issue, and give special matter in evidence.

Deff't not to deny the execution of any writing unless on oath. fence, or set off, unless the person so denying the same shall, if defendant, verify his plea by affidavit; and if plaintiff, shall file his or her affidavit denying the execution of such instrument: *Provided*, If the party making such denial be prosecuting, or sued as executor or administrator, it shall be sufficient to state, in such affidavit, the belief of the party making the same, according to his or her best knowledge, that such instrument was not executed by the testator or intestate.

When damages may be assessed by the clerk. SEC. 13. *Whenever judgment shall be given against the defendant or defendants by default, in any action brought on any instrument of writing for the payment of money only, the court may direct the clerk to assess the damages, by computing the interest, and report the same to the court, upon which final judgment shall be given; and in all other actions, when judgment shall go by default, the plaintiff may have his damages assessed by the jury in court.

When by jury. SEC. 14. The court may, in its discretion, before final judgment, set aside any default, upon good and sufficient cause, upon affidavit, upon such terms and conditions as shall be deemed reasonable.

Affidavits to be filed. SEC. 15. All affidavits read in court, during the progress of any cause, and relating thereto, shall be filed and preserved by the clerk.

Plff may assign actions on penal bonds and breaches. SEC. 16. In actions brought on penal bonds, conditioned for the performance of covenants, the plaintiff may assign in his declaration as many breaches as he may think fit, and the jury, whether on trial of the issue, or of inquiry, shall assess the damages for so many breaches as the plaintiff shall prove, and the judgment for the penalty shall stand as a security for such other breaches as may afterwards happen, and the plaintiff may, at any time afterwards, sue out a writ of inquiry, to assess damages for the breach of any covenant or covenants contained in such bond, subsequent to the former trial or inquiry; and whenever execution shall be issued on such judgment, the clerk shall endorse thereon the amount of the damages assessed by the jury, with the costs of suit, and the sheriff or coroner shall only collect the amount so endorsed: *Provided*, That in all cases where a writ of inquiry of damages shall be issued for any such breaches subsequent to the first trial or inquiry, the defendant, or his agent, or attorney, shall have at least ten days notice, in writing, of the time of executing the same.

Set off, how plead. SEC. 17. The defendant or defendants in any action brought upon any contract or agreement, either express or implied, having claims or demands against the plaintiff or plaintiffs in such action, may plead the same, or give notice thereof under the general issue, as is provided in the twelfth section of this act, or under the plea of payment; and the same, or such part thereof as the defendant or defendants shall prove on trial, shall be set off and allowed against the plaintiff's demand, and a verdict shall be given for the balance due, and if it shall appear that the plaintiff be indebted to the defendant, the jury shall find a verdict for the defendant or defendants, and certify to the court the amount so found; and

the court shall give judgment in favor of such defendant or defendants for the amount so certified, with the costs of his defence, and execution shall be issued on such judgment as in other cases. *When judg't may go for defendant.*

SEC. 18. In all civil actions, each party shall be entitled to a challenge of three jurors, without shewing cause for such challenge; and when the jury retire to consider of their verdict, they shall be permitted to take any papers that may have been used as evidence on the trial. And no plaintiff shall suffer a nonsuit on the trial, unless he do so before the jury retire from the bar. *Challenge.*

SEC. 19. If, during the progress of any trial in any civil cause, either party shall allege an exception to the opinion of the court, and reduce the same to writing, it shall be the duty of the judge to allow the said exception, and to sign and seal the same; and the said exception shall thereupon become a part of the record of such cause.* *Exceptions to the opinion of the court.*

SEC. 20. It shall be sufficient for the jury to pronounce their verdict, by their foreman, in open court, without reducing the same to writing, and the clerk shall enter the same in form, under the direction of the court; and if either party may wish to except to the verdict, or for other causes to move for a new trial, or in arrest of judgment, he shall, before final judgment be entered, give, by himself or counsel, to the opposite party, or his counsel, the points in writing, particularly specifying the grounds of such motion, and shall also furnish the judge with a copy of the same, and final judgment shall thereupon be stayed until such motion can be heard by the court. But no more than two new trials shall be granted to the same party in the same cause; nor shall any verdict or judgment be set aside for irregularity only, unless cause be shewn for the same, during the sitting of the court at the term such judgment or verdict shall be given. *Verdict.* *New trial.*

SEC. 21. Whenever an entire verdict shall be given on several counts, the same shall not be set aside, or reversed, if any one or more of the counts be good. *When verdicts shall not be set aside.*

SEC. 22. In cases of attachment against absent or absconding debtors, the attaching creditor or creditors shall, on the return of the attachment, or at the term of the court where the same is made returnable, file a declaration, with a copy of the instrument or account on which the attachment was issued, as in other cases; after which the cause shall proceed as in other cases; and if no declaration shall be filed, the defendant, on entering his appearance, shall have a judgment against the attaching creditor for costs. *In case of attachments, declaration to be filed.*

SEC. 23. Any person, for a debt *bona fide* due, may confess judgment by himself or attorney duly authorized, without process; and every confession of judgment, whether with or without process, shall operate as a release of all errors in the entering up of the judgment, or making record thereof; and in no cases except when the title of land shall come in question, shall it be necessary for the clerk to make a complete record, unless specially requested. *Judgment by confession.* *Complete record.*

by one of the parties, who shall pay the costs of the complete record.

When arrested.

SEC. 24. Where judgment shall be arrested for any defect in the record of proceedings after the first process, the plaintiff shall not be compelled to commence his action anew; but the court shall order new pleadings to commence with the error that caused the arrest.

Clerks to keep fee book.

SEC. 25. The clerks of the several circuit courts shall keep a fee book, in which shall be clearly and distinctly set down, in items under the proper title, the costs of each suit, including the sheriff's and witnesses', as well as the clerk's fees, noting distinctly what fees have accrued on the part of each party; which fee book shall be a public record; and whenever any suit shall be determined, and final judgment entered, the costs and charges of each party litigant shall be made up, and the costs of the prevailing party shall be included in the judgment, and the clerk shall always send out a bill of such costs with the execution; and the costs of the party failing in the suit shall be collected by fee bill, in the manner prescribed by law.

Fee bill to be entered therein.

SEC. 26. If any clerk shall issue a fee bill, or a bill of costs with the execution, without first entering the same in his fee book, or if any such bill of costs or fee bill shall be so issued which shall not be in substance a copy of the recorded bill, the same shall be void; and any person having paid such bill of costs or fee bill, may recover from the clerk the amount thereof, with costs of suit, in any court having cognizance thereof: and in every bill of costs to be made and recorded as aforesaid, the names of the witnesses shall be stated, with the number of days each attended at every term.

Fee book.

SEC. 27. It shall not be necessary to insert in the judgment other than the docket book, the costs of the prevailing party, except in cases where a complete record shall be required; but the fee book of the clerk shall be taken and deemed a part of the record; subject, however, at all times, to be corrected by the court.

Mesne profits.

SEC. 28. If the verdict in any action of ejectment shall be given for the plaintiff, it shall and may be lawful for the same jury to assess damages for the plaintiff for *mesne profits*; and when the plaintiff shall recover judgment by default, he may have a writ of inquiry of damages for such *mesne profits* as in other cases; and the court shall award execution, not only for possession, but for such damages and costs of suit.

Judgment docket.

SEC. 29. The clerks of the several circuit courts shall provide and keep in their respective offices a well bound book for entering therein an alphabetical docket of all judgments and decrees rendered in their respective courts; and it shall be the duty of said clerks, during every term, or within thirty days thereafter, to enter in such docket all final judgments and decrees rendered at such term in alphabetical order, by the name of the person against whom the judgment or decree was entered, which shall contain in columns, ruled for that purpose, the names of the parties, the date, the nature of the judgment or decree, the amount of the debt, damages, and costs, the book and page in which it is entered, and leaving a blank

column or columns for entering a note or memorandum of the satisfaction or other disposition thereof: and when any judgment or decree shall be satisfied by execution or otherwise, or shall be set aside, the said clerk shall enter a memorandum thereof in the column left for that purpose, shewing how disposed of, and the date, book, and page where the evidence thereof is recorded; and such dockets may be searched by persons at all reasonable times without fee: and every clerk who shall fail to keep such docket or to enter therein any judgment or decree as aforesaid, shall forfeit and pay a sum not exceeding one hundred dollars, nor less than twenty-five dollars and costs of suit: the one half to the use of the county where such court is held, and the other half to the use of any person who will sue for the same; to be recovered by action of debt in the circuit court. *Penalty for not keeping*

SEC. 30. Whenever any sheriff or coroner shall neglect or refuse to make return of any execution, to him directed and delivered, where the same shall be made returnable, or shall refuse or neglect to pay over any moneys collected on such execution, the party suing out such execution, on giving to said sheriff or coroner ten days notice in writing, of his, her, or their intention, may apply to the next circuit court for relief; and it shall be the duty of such court, on proof, by affidavit of the delivery of such execution, if the same be not returned, or on proof that such money has been collected and not paid over, to grant an order against such sheriff or coroner, requiring him to make immediate return of such execution; or if the amount or any part thereof has been collected, to pay over the same immediately with twenty per cent. thereon from the time of collection till paid; and on failure of such sheriff or coroner to comply with such order on demand, and being served with a copy of the order, he shall be judged to be in contempt, and punished accordingly; or the plaintiff in such execution may have judgment for the money with twenty per cent. thereon so collected, and have execution as in other cases. *Sheriff not returning execution and paying over money, how proceeded against.*

SEC. 31. The clerk shall enter in a book, to be kept by him for the purpose, the return of the sheriff or coroner of all executions, within thirty days after the same shall be returned, under the penalty imposed by the twenty-ninth section of this act.

SEC. 32. Appeals from the circuit courts to the supreme court shall be allowed in all cases where the judgment or decree appealed from, be final, and shall amount, exclusive of costs, to the sum of twenty dollars, or relate to a franchise, or freehold: *Appeals from the circuit to the supreme court.* *Provided*, such appeals be prayed for at the time of rendering the judgment or decree, and provided the party praying for such appeal shall, by himself, or agent, or attorney, give bond with sufficient security, to be approved of by the circuit court, and filed in the office of the clerk of the circuit court, within the time limited by the court; which bond shall be in a reasonable sum, sufficient to cover the amount of the judgment appealed from, and all costs, and conditioned for the payment of the judgments, costs, interest, and damages, in case the judgment shall be affirmed, and also for the due prosecution of said appeal, and the obligee in such bond may, at any time, on a breach of the conditions thereof, have and maintain an action at law as on other bonds.

SEC. 33. The appellant shall lodge in the office of the clerk of the supreme court an authenticated copy of the record of the judgment or decree appealed from, by or before the third day of the next succeeding term of said supreme court, provided that if there be not thirty days between the time of making the appeal, and the sitting of the supreme court, then the record shall be lodged as aforesaid, at or before the third day of the next succeeding term of said supreme court; otherwise the said appeal shall be dismissed, unless further time to file the same shall have been granted by the supreme court upon good cause shewn.

* See act of Dec. 6, 1836, following. See also, act of Jan. 10, 1827, title, "Costs," sec. 19.

SEC. 34. * In all cases of appeal and writs of error, the supreme court may give final judgment, and issue execution or remand the cause to the circuit court, in order that an execution may be there issued, or that other proceedings may be had thereon.

SEC. 35. No writ of error shall operate as a supersedeas, unless the supreme court or some justice thereof, in vacation, after inspecting a copy of the record, shall order the same to be made a supersedeas, nor until the party procuring such writ shall file a bond in the manner, and with the condition required in cases of appeals: when the clerk issuing such writ shall endorse thereon, that it shall be a supersedeas, and operate accordingly; and the parties in writs of error shall be subject to the same judgment and mode of execution, as is provided in case of appeals.

SEC. 36. Whenever the supreme court shall be equally divided in opinion on hearing an appeal or writ of error, the judgment of the court below shall stand affirmed.

SEC. 37. The circuit courts in charging the jury shall only instruct as to the law of the case.

Acts repealed.

SEC. 38. All acts and parts of acts coming within the spirit and meaning of this act, are hereby repealed; but no rights acquired shall be affected by this act. This act to take effect on the first day of June next.

APPROVED, Jan. 29, 1827.

AN ACT concerning Practice.

In force Feb. 2, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That any instrument of writing, to which the maker shall affix a scrawl by way of seal, shall be of the same effect and obligation, to all intents, as if the same were sealed.

SEC. 2. The supreme court, in case of a partial reversal, shall give such judgment or decrees, as the inferior court ought to have given; or remand the cause to the inferior court for further proceedings, as the case may require.

SEC. 3. A negro, mulatto, or Indian shall not be a witness in any court, or in any case, against a white person.

A person having one fourth part negro blood shall be adjudged a mulatto.

APPROVED, Feb. 2, 1827.

AN ACT to amend an act, entitled "An act concerning Practice in Courts of Law," approved, Jan. 29, 1827. In force Feb. 9, 1831.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases where a judgment or decree shall be rendered in any circuit court, in any case whatever, either in law or in chancery, against two or more persons, either one of said persons shall be permitted to remove said suit to the supreme court, by appeal, or writ of error, and for that purpose shall be permitted to use the names of all of said persons if necessary; but no costs shall be taxed against any person who shall not join in said appeal or writ of error. And all such cases shall be determined in said supreme court as other suits are, and in the same manner that it would have been if all the parties had joined in said appeal or writ of error. Where there are several defendants one may appeal.

SEC. 2. Hereafter, minors may bring suits in all cases whatever, by any person that they may select as their next friend; and the person so selected shall file bond with the clerk of the circuit court, or justice of the peace before whom the suit may be brought, acknowledging himself bound for all the costs that may accrue and legally devolve upon such minor. And after bond shall have been so filed, said suit shall progress to final judgment and execution, as in other cases. Minors may sue by next friend. Next friend to give bond for costs.

APPROVED, Feb. 9, 1831.

AN ACT, to amend an act, entitled "An act concerning Practice in Courts of Law," approved, January 29, 1827. In force March 1, 1833.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in every species of personal actions in law or equity, when there is more than one defendant, the plaintiff commencing his action, where either of them resides, may have a writ or writs issued, directed to any county or counties, where the other defendants or either of them may be found: *Provided,* that if a verdict shall not be found or judgment rendered against the defendant or defendants, resident in the county where the action is commenced, judgment shall not be rendered against those defendants who do not reside in the county, unless they appear and defend the action. In actions commenced in any county where one defendant resides, process may be issued to any other county where co-defendants may reside.

SEC. 2. If any female plaintiff, or complainant, or defendant, in any suit in law or equity, shall marry pending the same, such marriage may be suggested and entered upon the records of the court where the action or suit is pending, and the husband made a party thereto; and the suit shall thereupon progress, as in other cases. When a female party marries during the pendency of a suit.

APPROVED, March 1, 1833.

In force June 2, 1833. AN ACT, simplifying proceedings at Law for the collection of debts.

Plaintiff may file with his claim a petition.

Form of the same.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That when any person holding a bond or note for the direct payment of property or money, shall desire to put the same in suit, he may do so, by filing with the clerk of any circuit court having jurisdiction thereof, together with a petition purporting as follows: "F. Circuit, Sct.; A. B. plaintiff states that he holds a bond or note (as the case may be) on the defendant C. B., in substance as followeth, (here insert a copy of the bond or note,) yet the said debt remains unpaid, wherefore he prays judgment for his debt and damages for the detention of the same, together with his costs."

If plaintiff be endorsee.

SEC. 2. If the plaintiff shall hold the bond or note as endorsee, then after reciting the bond or note, say on which is the following assignments, (recite the assignments,) whereby the plaintiff hath become the proprietor thereof of which the defendant hath had due notice.

Copy of petition to be sent with the summons.

SEC. 3. A copy of the petition shall be sent out with summons annexed thereto, requiring the defendant or defendants to appear and answer the said demand, on the second day of the succeeding term, which shall be executed by the sheriff, by delivering a copy of the petition and summons to the defendant, and each of them, if there be more than one. The petition and summons shall not go to the rules, but the proceedings shall be had in court, and shall be docketed to the second day.

Officer shall note the day on which the same was served.

SEC. 4. The sheriff or other officer in his return, shall note the day or days on which it shall have been executed, and whenever it shall appear therefrom, that it was executed ten days or more before the return day, judgment shall be rendered at the first term, subject to be continued for good cause shown; but if the process shall not have been executed ten days before the sitting of the court to which the same is made returnable, a continuance shall be entered, unless a trial shall be had by consent of the parties.

Said petition shall stand in place of a declaration.

SEC. 5. The said petition shall stand in the place of a declaration: the defendant or defendants may appear and plead, and then an issue may be joined as in actions of debt on such bond or note; but if the defendant or defendants shall not appear and plead, the plaintiff may take judgment, or at his option may take an interlocutory judgment by default, as in other cases, and writ of inquiry, which, if practicable, may be forthwith executed, and judgment rendered thereon: *Provided*, That if the defendant or defendants, at any time before the writ of inquiry shall be executed, shall appear and plead to issues, the writ of inquiry shall be set aside.

Act of jeofails.

SEC. 6. After verdict, the act of jeofails shall apply as in actions of debt heretofore; nothing in this act shall prohibit any person, who shall choose so to do, from suing in the ordinary way, as if this act had never passed; and the fee to the sheriff or other officer, for delivering a copy of the petition and summons, shall be the same as fees for similar duties; the clerk shall receive the like fees for similar services.

SEC. 7. When a petition shall have been filed according to the provisions of this act, and an affidavit to hold to bail, as herein provided, there shall be issued by the clerk (if he shall be satisfied there is good cause) a *capias* and an order to hold to bail, as is now provided by law. In such cases the affidavit shall be as near as may be in the following form to wit:

State of Illinois, }
County, } ss.

A. B. plaintiff in the above petition, maketh oath and saith, that he has a real subsisting and unsatisfied cause of action against C. D., the defendant, which is the same cause of action set out in the above petition, and amounts to the sum of _____; and further, that the plaintiff will be in danger of losing his debt, unless the defendant be held to bail. Signed, A. B.

Sworn to, and subscribed before me, at my office, this _____ day of _____ E. F., Clerk.

Which affidavit may be made before the clerk of the proper county, or before any justice of the peace in the state.

This act to take effect and be in force from and after the first day of June next.

APPROVED, Feb. 25, 1833.

AN ACT to amend the Practice Act of 1827.

In force Feb. 7, 1835.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That in all cases where interlocutory judgment shall be given in any action upon a penal bond or other instrument, and the damages rest in computation, the court may refer it to the clerk to assess and report the damages, and may enter final judgment therefor, without a writ of enquiry, and without empanelling a jury for that purpose. The provisions of this act shall apply to proceedings instituted or had under the act entitled "An act simplifying proceedings at law for the collection of debts," approved, February, 1833.

APPROVED, Feb. 7, 1835.

AN ACT concerning appeals and writs of error.

In force Dec. 6th 1836.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That hereafter when an appeal or writ of error shall be prosecuted from the judgment of any circuit court of this state, to the supreme court, and said appeal or writ of error shall be dismissed or the judgment of the circuit court affirmed, it shall be the duty of the clerk of the circuit court from which said appeal or writ of error was prosecuted, upon a copy of judgment

*affirmed,
duty of
clerk cir-
cuit court.*

*Execution
may issue.*

the order of the supreme court dismissing said appeal or writ of error, or affirming said judgments being filed in his office to issue execution upon said judgment, and to proceed thereon in all respects, as though no appeal or writ of error had been prosecuted from said judgment.

This bill having been laid before the Council of Revision, and ten days not having intervened before the adjournment of the General Assembly, and the said bill not having been returned with the objections of the council, on the first day of the present session of the General Assembly, the same has become a law.

Given under my hand, the 6th day of
December, 1836.

A. P. FIELD, *Secretary of State.*

*In force
21st July,
1837.*

AN ACT to amend the Act entitled "An Act concerning Practice in Courts of Law," approved 29th January, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That exceptions taken to opinions and decisions of the circuit courts, upon the trial of causes, in which the parties agree that both matters of law and fact may be tried by the court; and in appeal cases, tried by the court without the intervention of a jury, shall be deemed and held to have been properly taken and allowed, and the party excepting may assign for error before the supreme court, any decision or opinion so excepted to, whether such exception relates to receiving improper, or rejecting proper testimony, or to the final judgment of the court upon the law and evidence.

SEC. 2. Exceptions taken to opinions or decisions of the circuit courts, overruling motions in arrest of judgment, motions for new trials, and for continuances of causes, shall hereafter be allowed; and the party excepting may assign for error any opinion so excepted to, any usage to the contrary notwithstanding.

APPROVED, 21st July, 1837.

PUBLIC ARMS.

AN ACT concerning Public Arms.

*In force
March 1,
1833.*

*Governor to
employ
some per-
son to col-
lect the*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the governor to employ some fit person or persons to collect together at the seat of justice in each county, all the arms, accoutrements, &c. belonging to the state of Illinois, in whose hands so-

ever the same may be found; and when so collected together, to cause them, together with all other arms belonging to the state, to be conveyed to, and deposited with the warden of the penitentiary at Alton, who shall receive and take charge of the same, and cause them to be cleaned, repaired, and kept in repair, by the convicts which may from time to time be under his charge, so far as the same can be done by them; and so far as said convicts shall be unable to do the same, it shall be the duty of said warden (under the direction of the governor or quarter master general) to employ some competent gunsmith to do the same: *Provided*, that the one hundred and forty half stocked rifles, now at Danville, may be retained at said place, or some other place on the upper Wabash, under the charge and direction of the colonel of the regiment of the county, during the pleasure of the governor; the said colonel giving bond with security, to the satisfaction of the governor, and payable to him, conditioned as he shall prescribe in regard to the manner in which they shall be kept or used, and in respect to the time when, and the place to which they shall be returned; and if the same should be required, to be conveyed to Alton, or sent to any other point, the same shall be at the expense of the state, to be paid on the order of the governor, out of the contingent fund: *Provided, also*, that nothing herein contained shall be so construed as to require the arms now in the possession, or which may hereafter be placed in the possession of independent companies, to be surrendered up.

SEC. 2. It shall be the duty of the governor to cause the person or persons whom he shall employ, to collect the arms, &c. to be furnished with the receipts of captains and other officers, and all other evidence in his possession, or in that of the quarter master general, shewing in whose hands any of the public arms may be; and such person or persons so employed, shall have power to distrain and take said arms wherever, and in whose hands soever the same may be found; to call upon the captains, or other officers or persons whose receipts he may have for all such arms, &c. as shall not have been returned by them, or the men under their command; and in default of the same being surrendered, or shewn on proper and sufficient affidavits, to the satisfaction of the collector of arms to have been lost by the soldier in actual service in the line of his duty in the army, or by other unavoidable accidents, to sue for, and recover in the name of the people of the state, the value of said arms, &c., as charged by the United States to the state, from such captain or other officer or person; and such captain or other officer or person shall have like remedy, but in his own name, against the men in whose hands the same were placed, to recover from them the same sum, with costs.

SEC. 3. On return to the person or persons so employed, of any arms, &c., or on the loss of the same as aforesaid, being duly made to appear, or on receipt of the value of them, as aforesaid, by judgment or otherwise, the said person so employed shall give to such captain, &c., an acquittance, in full discharge of his liability to the state for the arms or other things specified in his receipt, or for which he may otherwise be accountable.

SEC. 4. Suits under this act may be brought before any justice

*arms at the
county seat
of each
county.
Should be
deposited
with the
warden of
the Peni-
tentiary.*

*Persons
employed
as above to
be fur-
nished with
evidence in
relation to
said arms.*

*Should give
acquit-
tances for
the same.*

Suits under this act. of the peace, whose duty it shall be to report the case, and the amount of his judgment in favor of the state, forthwith to the clerk of the county commissioners' court of the county, to be reported by him to the auditor; and the constable or other officer who shall collect the same, shall pay the same over to the sheriff of the county, who shall pay the same into the state treasury, at the same time he shall pay his non resident taxes.

Compensation. SEC. 5. The expense of carrying this act into effect, and the compensation to be paid to the persons employed under it, shall be paid on the certificate of the governor, out of the contingent fund, and James B. Campbell shall be also entitled to receive out of any money in the treasury not otherwise appropriated, the sum of one hundred and fifty dollars in full of his services and expenses, and those of his assistants during the year 1832, in taking charge of, exchanging, taking and giving receipts for arms at Ottawa, for house rent, and receiving back and making inventories of, and giving acquittances for arms returned, &c.; said sum to be apportioned under the direction of the governor, to the said James B. Campbell, according to the time actually employed, and the expenses incurred by the said Campbell for house rent and the hire of an assistant, as well as for all services rendered by himself, as herein specified.

Compensation of quarter master general. SEC. 6. There shall be paid to the quarter master general out of any money in the treasury not otherwise appropriated, the sum of one hundred and twenty-eight dollars and fifty cents, in full of his services and expenses, and those of his assistants and deputies during the spring and summer of 1832, in taking charge of, issuing out, and taking receipts for arms, &c. at Beardstown, Vandalia, and Ottawa, and in receiving back and making inventories of, and giving acquittances for arms, &c. returned; said sum to be apportioned under the direction of the governor, to the said quarter master general, and his associates, according to the time actually employed, and the expense incurred by each, previous to any of them coming under the pay of the United States: *Provided*, that the governor shall not allow to the said Campbell and H. Eddy any more of the above appropriation than will be a reasonable compensation for the value of said services, as rendered, which shall be ascertained by satisfactory affidavits.

APPROVED, March 1, 1833.

PUBLIC AND ANCIENT RECORDS, &c.

AN ACT concerning ancient Books, Papers, and Records.

In force Jan. 30, 1821.

Certain ancient records to be delivered by the secretary of state to the re- SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all the ancient books, records, and papers, which are now in the office of the secretary of state, and which bear date prior to the thirteenth day of July, in the year of our Lord one thousand seven hundred and eighty-seven,

shall be by the secretary of state delivered over to the recorder of Randolph county; and the said recorder shall safely keep the same as records of his office. *recorder of Randolph county.*

SEC. 2. *Be it further enacted,* That all copies and transcripts which may be made by the said recorder, from the said papers or records, and attested by him, shall be as authentic in any court of record in this state as if given by the secretary of state; and the said recorder shall be entitled to the same fees for such copies, transcripts, and attestations as he is now entitled to by law for the performance of similar services. *Copies made there-of by said recorder to be as authentic as if made by the secretary of state. Fees for such copies.*

APPROVED, January 30, 1821.

AN ACT providing a summary mode to recover Public Records, Papers, and other public property illegally withheld. *In force June 1, 1831.*

SEC. 2. [*Be it enacted by the people of the State of Illinois, represented in the General Assembly,*] If any person, whose office has become vacated or determined, as aforesaid, or his executors or administrators shall neglect or refuse to deliver over, according to the provisions of this act, any record, book, paper, document, or other article of public property, as aforesaid, when thereto lawfully required by the successor to such officer or other person entitled to the custody thereof, it shall and may be lawful for any judge of the supreme or circuit court of the proper county, upon the affidavit of any competent person, setting forth proper facts, to issue his warrant, directed to the sheriff or coroner of the proper county, commanding him to seize all the records, books, papers, documents, and other public property belonging or appertaining to the said officer, and deliver the same to the person entitled to the custody thereof, to be named in such warrant. *Judge may order seizure of public books and papers, when detained.*

SEC. 3. It shall be lawful for the officer executing any warrant, issued as aforesaid, to break open any doors, trunks, or places in which any of the records, books, papers, documents, or other public property, in such warrant commanded to be seized and secured, may be concealed, or in which he may suspect them to be, and in case of resistance, to arrest any person or persons who may resist the execution of such warrant, and to carry him, her, or them before some judge or justice of the peace, to be dealt with as other persons obstructing the execution of such process; and the officer executing such warrant, may call to his assistance the power of the county, in the same manner as in the execution of other process. And any officer, to whom any such warrant may be directed and delivered, who shall neglect or refuse to execute and return the same according to law, or otherwise fail to perform any of the duties herein required of him, shall forfeit and pay a sum not exceeding one thousand, nor less than one hundred dollars, to be recovered by indictment, to the use of the county, in any court of competent jurisdiction. *Officer executing such warrant, his duties. Penalty for neglect of officer to execute warrant.*

SEC. 4. It shall be lawful for any person who may think himself aggrieved by the issuing of any warrant as aforesaid, to apply to any judge of the supreme or circuit court of the proper county, who, if he be satisfied, upon the affidavit of the applicant, there is good cause to believe that injustice has been, or is about to be done, under, or by virtue of such warrant, shall issue a citation to all persons interested therein, commanding them to appear before such judge, at a place and time to be in such citation named, which shall be executed by the sheriff or coroner, as process issued by the supreme or circuit court. And the judge shall have the power to enforce obedience to such citation by attachment, to be issued by him, and shall have power to proceed in a summary way, and determine according to right and justice, and may issue his warrant for the restoration of any book, record, paper, document, or other article of property, which shall appear to him to have been improperly seized or delivered over; which warrant shall be executed in the same manner, and the officer to whom it is directed shall have the same powers, and be liable to the same penalties for neglect of duty, as upon other warrants issued under this act. This act to take effect on the first day of June next.

APPROVED, February 15, 1831.

PUBLIC OFFICERS.

*In force
Feb. 20,
1819.*

AN ACT requiring certain official reports to be made to the General Assembly.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly, and it is hereby enacted by the authority of the same,* That it shall be the duty of each of the justices of the supreme court, the attorney general, the clerk of the supreme court, each of the prosecuting attorneys in the several circuit courts, the secretary of state, the auditor of public accounts, the treasurer of the state, the major, the brigadier and adjutant generals, and each of them, to make a report of all apparent defects, inconsistencies, omissions, unequal or oppressive laws, which each shall have discovered, to the speaker of the house of representatives, at the commencement of each and every session of the general assembly, for the purpose of enabling it to make such amendments as will tend to perfect our code.

This act shall commence and be in force from and after the passage thereof.

APPROVED, February 20, 1819.

AN ACT relative to several officers therein named.

*In force
Jan. 22,
1829.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the attorney general, and each state's attorney, shall, on or before the first day of March next, make and execute a bond to the governor of the state, and his successors in office, with good and sufficient security, to be approved by the governor, in a sum sufficient to cover all notes to the state bank, or its branches, put into his or their hands for collection by the cashiers of the principal bank, or its branches; and the governor shall, should he deem it necessary, require said attorney general, and each of said state's attorneys, from time to time, to give bond, with additional security. Said bond or bonds shall be conditioned, that said attorney will well and faithfully collect and pay over all moneys by him collected, or to be collected upon said notes of said bank, to the cashiers thereof, as soon as the same shall be collected.

*Attorney
general
and state's
attorneys to
give a bond.*

SEC. 2. Each of the cashiers of the said bank shall, from time to time, when required by the governor, transmit to him an account of all notes so placed in the hands of said attorneys, as aforesaid; and upon failure or refusal of said attorneys to give such bond and security as required in this act, the governor shall forbid all persons from paying said moneys to such attorney; and every payment made to such attorney, after such refusal or neglect to give bond, and notice thereof as required, shall be void, and the persons paying the same shall be liable, and shall repay such sum or sums so by them paid to such attorney, to the state bank, or to the state, as the case may be, or to such officer as the legislature may authorize to collect the same.

*Account of
notes furnished for
collection
shall be
made to the
governor.*

SEC. 3. The office of judge of probate, county surveyor, recorder, the office of clerk of the circuit and county commissioners' courts, shall be deemed vacant when such officer, holding any of said offices, shall leave the county wherein he may hold said office, and permanently reside out of the same.

*Certain
offices de-
clared va-
cant by non-
residence.*

This act to be in force from and after its passage.

APPROVED, January 22, 1829.

PUBLIC PROPERTY.

AN ACT to provide for the preservation of the property of the State.

*In force
Feb. 15,
1827.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That at the close of every session of the general assembly, the secretary of state shall cause all the tables, chairs, desks, and other furniture of the two houses of the general assembly to be placed in the small room adjoining the senate chamber, and securely locked therein; and he shall not

*Furniture
how pre-
served.*

permit any part of said furniture to be used during the recess of the general assembly, for any purpose whatever.

*Papers
how re-
turned.*

SEC. 2. The secretary of the senate, and clerk of the house of representatives, at the close of each session to the general assembly, shall deliver to the secretary of state all books, bills, documents, and papers in the possession of either branch of the general assembly, correctly labelled, folded, and classed according to the subject matter of such documents respectively; and the secretary of state is hereby required to file the same in his office.

*Sec'y of
state to
make cer-
tain con-
tracts.*

SEC. 3. The secretary of state is hereby authorized and empowered to contract with some person, on the best terms he can, to procure conductors, and to have such repairs made to the eaves and gable ends of the state house as will be necessary to preserve it from injury; and make such alterations in the chimneys as may be necessary to prevent their smoking; a statement of the expenses for which, he shall lay before the governor, who, if the amount be reasonable, shall allow the same; and the auditor shall issue his warrant on the treasury accordingly. And as often as the windows and doors of said house shall need repairs, or the furniture thereof to be replenished or repaired, the said secretary shall have the same done, which shall be allowed and paid for as above; and he shall permit the firewood which may remain on hand, at the end of the general assembly, to be used for the public offices.

*To employ
persons to
take care of
state house.*

SEC. 4. The secretary of state is authorized to employ a fit person to take charge of the state house, who shall permit the senate chamber or representatives' hall to be used by the district court of the United States, by the supreme, circuit, and county commissioners' courts, by the auditor of public accounts, for the sale of lands for taxes, and by the people of Vandalia for public meetings. The person so employed shall receive a compensation for his services, not exceeding twenty-five state paper dollars per annum, payable quarterly.

*Act re-
pealed.*

SEC. 5. All acts and parts of acts coming within the purview of this act, are hereby repealed.

This act to take effect from its passage.

APPROVED, February 15, 1827.

*In force
Feb. 9,
1835.*

AN ACT concerning Public Records.

*State re-
corder's
books to be
removed to
Rushville.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the Governor of this State is hereby authorized to cause the books in the office of the Secretary of State, and in the Recorder's office at Edwardsville in Madison county, containing the records of deeds for lands lying in the Military Tract in this State, to be removed to the Recorder's office in Rushville in Schuyler county.

*Recorder
of Madison
county.*

SEC. 2. The Recorder of Madison county is hereby required, as soon as practicable, to transcribe into a book to be provided by him for that purpose, any deeds which may be recorded in the

books in his office, containing the records of deeds for land lying in the Military Tract before said books shall be taken from his office, noting at the end of each deed and acknowledgment, the book and page in which said deed is recorded. See act of Jan. 13, 1836.

SEC. 3. That it shall be the duty of the Recorder of Schuyler county to give his receipt for said record books when the same shall come to his office, describing each book by its letter and number of pages, which receipt shall be filed in the office of the Secretary of State. Duty of re-corder of Schuyler county.

SEC. 4. That the Recorder of Madison county shall be entitled to the sum of twenty-five cents for each deed and acknowledgment which he may transcribe in pursuance of the provisions of the second section of this act, to be paid out of the State Treasury, on the warrant of the Auditor of Public Accounts, together with the cost of the record book contemplated in the second section of this act. The Auditor to draw his warrant on the Treasurer for the amount of said expenses, when he shall be satisfied of the number of said deeds and acknowledgments, and the cost of said record book shall be certified to him under the seal of the county commissioners' court of Madison county. Compensation to the recorder of Madison.

SEC. 5. That whenever the Governor shall inform the Auditor of Public Accounts of the amount of the expenses of removing said records, it shall be the duty of the Auditor to draw his warrant on the Treasurer in favor of the person or persons entitled to the same, which shall be paid out of the State Treasury.

This act to be in force from and after its passage.

APPROVED, February 9, 1835.

AN ACT to provide for Transcribing certain Records therein named. In force Feb. 12, 1835.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the county commissioners' court of the county of Adams, be, and they are hereby authorized and empowered, whenever they shall deem it expedient, by an order to be entered on their records, to appoint some competent person as a commissioner, for the purpose hereinafter expressed, who shall take and subscribe on oath faithfully and carefully to perform such duties as may be required of him by this act, which oath may be administered and certified by any justice of the peace of said county. County commissioners of Adams county to appoint a commissioner to transcribe said records. Shall take an oath.

SEC. 2. It shall be the duty of the county commissioners' court of said county, when they make such appointment, or as soon thereafter as may be convenient, to provide a sufficient number of blank books, substantially bound, and suitable for recording deeds in, which books, when provided, shall be delivered to the aforesaid commissioner, who shall receipt for the same. County commissioners to furnish him with suitable books.

SEC. 3. As soon as such book or books shall be delivered to said commissioner, he shall record in each book a copy of the His duties.

order of his appointment and his oath of office, and proceed in due time to all the recording offices in this State where deeds or title papers for lands lying in the said county of Adams have been by law required or permitted to be recorded, or where such records may be deposited or kept, and shall, from the books of said offices, make out and record in a fair and legible manner in the book or books so furnished him, all deeds and title papers to lands lying in the aforesaid county, which have been recorded in any such recording office as aforesaid, after which, said commissioner shall return the book or books so delivered to him, to the Recorder of the county of Adams; and it shall be the duty of said Recorder to make a certificate to that effect, at the end of each book. The said Recorder shall estimate the number of deeds which said commissioner shall have transcribed into such book or books, and certify the same to the county commissioners' court of said county, who shall thereupon make an order in favor of such commissioner, for the sum of twenty-five cents for each deed by him transcribed as aforesaid, to be paid as other county orders are.

Duties of recorders and others having said records in possession.

SEC. 4. It shall be the duty of all recorders and other persons who may have the care, custody, or control of any of the books in which deeds to lands lying within the said county of Adams have been recorded, to permit said commissioner to make transcripts of all and every such deed, and for that purpose, to use the books in which such deeds may be recorded.

SEC. 5. The said county commissioners' court shall have power to fill all vacancies in the said office of commissioner.

Transcripts when so made to be deemed books of record.

SEC. 6. The said commissioner in transcribing the deeds and title papers aforesaid, into the books so provided as aforesaid, shall, immediately after transcribing each deed, title paper, acknowledgment and certificate, note in the said book at what time, in what office, book and page, the same was originally recorded, and when such transcribed record books shall be delivered to the Recorder of the said county of Adams, they shall, to all intents and purposes, be considered as books of records of deeds for the said county of Adams, and copies of such transcribed records certified by the Recorder of said county, shall be evidence in all courts and places, in the same manner that copies of deeds regularly recorded in the Recorder's office of said county are evidence and with the like effect.

Certified copies thereof good evidence.

SEC. 7. Copies of the records of deeds and title papers, from the books of records, to be deposited in the Recorder's office of the county of Schuyler, certified by the Recorder of the said county of Schuyler, shall be evidence in all courts and places, in the same manner and with the like effect, as if the same were certified by the proper Recorder of the office to which the said records originally belonged.

SEC. 8. The provisions of this act may be extended to all or any of the counties in the Military Tract, and the county commissioners' courts of any or all of those counties, are hereby authorized and empowered to have the records of all deeds and title pa-

pers for lands situated in their respective counties, transcribed in the same manner and with the same effect as is herein provided for Adams county.

APPROVED, Feb. 12, 1835.

AN ACT supplemental to an act, entitled "An act concerning Public Records," approved February 9th, 1835. *In force Jan. 18, 1836.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the second section of the act to which this is a supplement, which requires the recorder of Madison county, to transcribe certain deeds, be construed to mean deeds for lands lying in Madison county. *Transcribe deeds.*

SEC. 2. That the governor of this state is hereby authorized to cause the said deeds to be transcribed, as required by the act to which this is a supplement. And in case the said recorder of Madison county, shall neglect or refuse to transcribe the said deeds, within three months from the passage of this act, the governor is hereby authorized to employ a suitable person to transcribe the same; and it shall be the duty of the said recorder of Madison county, to give the person so employed by the governor, access to the record books, in which the said deeds are recorded. *Governor's duty.*

SEC. 3. That the governor is hereby authorized to allow the person employed by him to transcribe the deeds aforesaid, a just compensation for his services, to be certified by the governor, and paid on the warrant of the auditor, as provided in the fourth section of the act to which this is a supplement; *Provided,* That if the expense of transcribing such deeds, exceed the sum of one hundred dollars, such excess shall be paid by the county commissioners' court of Schuyler county. *Compensation.*

APPROVED, January 18, 1836.

PUBLIC PRINTER.

*AN ACT defining the Duties of Public Printer and fixing the time and manner of performing the same.** *In force Jan. 24, 1835.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter, until the legislature shall otherwise direct, all laws, journals, bills, messages, advertisements, blanks, certificates, circulars, or advertisements of any description, which shall be ordered to be printed by the legislature of the State of Illinois, or by either branch thereof, or by *All laws, journals, messages, blanks, circulars, advertisements, &c., to be printed by public printer.*

* See Laws.

the Governor, or by either of the heads of departments, in pursuance of law and the discharge of their official duties, shall be given to the public printer or printers, hereafter to be elected by the joint ballot of the two houses of the legislature of this State, and said public printer or printers, shall receive for their services the following prices, viz: For all laws, journals, bills, messages, reports and documents, or other printing for the legislature, sixty-two and a half cents per thousand ems for composition, and sixty-two and a half cents per token for press-work; for the first quire of blanks of any form, one dollar and fifty cents, and for every subsequent quire of the same form ordered to be printed at the same time, one dollar, except when said blanks contain so much rule and figure work, as that journeymen would make an extra charge, agreeably to the rules of printing, in which case the public printer may make an advance of fifty per cent. on the charge of the journeymen in composition and press-work: *Provided*, That the public printer or printers furnishes paper for printing said blanks, certificates, or circulars: *And provided further*, That if said blanks, certificates, or circulars, be badly or inaccurately printed, or be printed on paper of an inferior quality, the officer ordering the same, may refuse to receive the same; for advertising, the public printer or printers, shall receive for every one hundred words, fifty cents the first insertion, and twenty-five cents for every subsequent insertion that may be ordered by the officer of government that directs the same to be published; and all other editors of papers who may publish such advertisement by direction of the proper officer, shall receive for their services the same as the public printer or printers for the same services.

Prices to be allowed for printing for the State.

Proviso.

Duty of public printer.

SEC. 2. That it shall be the duty of the public printer or printers, with the advice and concurrence of the Secretary of State, to procure before the meeting of every legislature, on the best terms possible, paper of as good quality as is generally used in publishing statute books, for the printing of the laws, and suitable paper for all other printing which will be wanting for the use of the legislature, and he or they shall be allowed by the State the full amount of the cost and carriage of the same, together with such reasonable allowance for his or their trouble in providing the same; and such interest on the money expended as may appear reasonable to the Auditor, Treasurer and Secretary of State, subject to the supervision of the subsequent legislature. It shall be the duty of the public printer or printers, to publish the laws and journals on long primer or small pica type, and to make the pages as large as the paper will admit of, and leave a sufficient margin.

Shall give bond.

SEC. 3. That the public printer or printers, shall be required to give bond with sufficient security to be approved of by the Governor, in the penal sum of two thousand dollars, for the faithful performance of all printing and other services required to be done by him or them, for the State or any of its officers, under the provisions of this act.

Laws and journals of the present session when to be completed.

SEC. 4. That the printing of the laws and journals of the present session of the legislature, shall be completed within three months after the public printer or printers, shall have been furnished with a copy of the same; and at every succeeding session, printed

copies of the journals shall be furnished within twelve days after the adjournment of the legislature: *Provided*, That the clerks of the two houses shall have furnished the public printer or printers, every morning, with the proceedings of the preceding day; and the laws passed at each subsequent session of the legislature, shall be printed within forty days after the adjournment of the legislature; and a failure on the part of the public printer or printers, shall subject him or them to a forfeiture of six per cent. per week on the whole amount of their contract.

Proviso.

SEC. 5. That the public printer or printers, shall procure the folding, stitching and binding of all such laws and journals as may be folded, stitched and bound, and shall receive such compensation as may be agreed upon by the Auditor, Treasurer and Secretary of State, who shall be governed by the usages of the binders west of Cincinnati who carry on the book-binding business.

Compensation for binding.

SEC. 6. That it shall be the duty of the Secretary of State to examine the printing of all laws, and see that they be correctly done, and in a workmanlike manner; and it shall be the duty of the Auditor, Treasurer and Secretary of State to examine all accounts rendered by the public printer or printers, for work performed or materials furnished for the State, which officers shall call to their aid practical printers whenever they shall be satisfied that the charges have not been correctly made.

Duty of Secretary of State.

SEC. 7. That on the fulfilment of any order for printing, folding, stitching or binding, or for paper furnished by the public printer or printers, and used in printing laws or journals, or other work in which the State furnishes the paper, the Secretary of State shall certify the fact to the Auditor, who shall issue his warrant on the Treasurer for the sum due such printer or printers, which shall be paid out of any money not otherwise appropriated.

Amount to be certified to Auditor.

This act to take effect and be in force from its passage.

APPROVED, January 24, 1835.

AN ACT concerning the publication of the Laws and Journals.

In force Jan. 16, 1836.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the Secretary of State shall deliver to the public printer, within ten days after the adjournment of each session of the General Assembly, copies of all laws and joint resolutions passed by such General Assembly, and which may be required to be printed. The secretary of state shall hereafter superintend the printing of the journals.

Duty of Secretary of State.

SEC. 2. The journal of each house of the General Assembly, shall hereafter be kept in well bound books. The secretary of the Senate, and clerk of the house of representatives, shall furnish to the public printer, every morning during each session of the General Assembly, a copy of the journal kept by them respectively, of the day preceding the last day's journal; and the said secretary and clerk shall, within ten days after the adjournment of each session

Duty of Secretary of Senate and Clerk of H. R.

of the General Assembly, deposite the original journal kept by them as aforesaid with the secretary of state.

SEC. 3. Hereafter the binding of the laws shall be completed within seventy-five days from the time the copies are delivered to the public printer by the secretary of state.

Binding.

Public Printer failing to comply shall forfeit six per cent.

SEC. 4. If the public printer shall fail to print the laws and journals within the time limited by law, or if he shall fail to have the laws bounds within the time limited, it shall be the duty of the secretary of state, to state in the certificate which he is required to give to such printer, the time at which such laws and journals shall have been printed, and the time at which the binding should have been completed, and the time at which the said printing was completed; and the Auditor shall thereupon deduct from the price of such printing, if the failure be in the printing, or if the failure be in the binding, deduct from the price of such binding, six per cent. per week, on the price of the printing or binding, as the case may be, and issue his warrant on the treasury, for the sum due such printer, after making the deductions aforesaid.

APPROVED, January 16, 1836.

In force March 4, 1837.

AN ACT in relation to the Public Printer.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the public printer or printers shall be allowed forty days from the adjournment of the legislature, to complete the printing of the journals, any law to the contrary notwithstanding.

Time allowed to print journals.

APPROVED, March 4, 1837.

QUO WARRANTO.

In force Dec. 28, 1826.

AN ACT to regulate proceedings upon information in the nature of a Quo Warranto.

When and where an information in nature of a quo warranto may be exhibited

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in case any person or persons shall usurp, intrude into, or unlawfully hold, or execute any office or franchise, it shall and may be lawful for the attorney general, or the circuit attorney of the proper circuit, with the leave of any circuit court, to exhibit to such court, one or more information or informations, in the nature of a *quo warranto*, at the relation of any person or persons desiring to sue or prosecute the same, who shall be mentioned in such information or informations, as the relator or relators against such person or persons so usurping, intruding into, or unlawfully holding or executing any such office or

franchise, and to proceed therein, in such manner as is usual in cases of informations in the nature of *quo warranto*. If it shall appear to said court that the several rights of divers persons to the same office or franchise, may properly be determined on one information, it shall and may be lawful for the said courts to give leave to exhibit one such information against several persons, in order to try their respective rights to such office or franchise; and such person or persons against whom such information or informations in the nature of a *quo warranto* shall be sued or prosecuted, shall appear and plead, as of the same term in which the said information or informations shall be filed, unless the court shall give further time to such person or persons against whom such information or informations shall be exhibited, to plead; such person or persons, who shall sue or prosecute such information or informations, shall proceed thereupon with the most convenient speed that may be, any law, usage, or custom to the contrary thereof notwithstanding.

SEC. 2. In case any person or persons against whom any such information, in the nature of a *quo warranto*, shall, in any of the said cases, be exhibited as aforesaid, shall be found or adjudged guilty of any usurpation or intrusion into, or unlawfully holding and executing any office or franchise as aforesaid, it shall and may be lawful for the said courts, as well to give judgment of ouster against such person or persons, of and from any of the said offices or franchise as to fine such person or persons, respectively, for his or their usurping, intruding into, or unlawfully holding and executing any such office or franchise; and also to give judgment that the relator or relators in such information named, shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant or defendants in such information, he or they for whom such judgment shall be given, shall recover his or their costs therein expended, against such relator or relators.

Judgment of ouster and fine.

Costs.

SEC. 3. It shall be made lawful for the court in which any information as aforesaid shall be exhibited, to allow to the relator or relators, and the defendant or defendants such convenient time to plead, reply, rejoin, or demur, as to said court shall seem just and reasonable.

Time allowed to plead, reply, rejoin, or demur.

SEC. 4. Appeals may be taken from the decision of the circuit court, upon such terms as the said circuit court shall prescribe; or writs of error may be prosecuted whenever the supreme court, or any of the judges thereof, in vacation, upon being presented with a copy of the record, shall certify that there is reasonable cause for the bringing such writ: The said supreme court, or judge in vacation, may impose such terms and conditions upon the party wishing to prosecute such writ of error, as to the said court or judge may seem reasonable and just. The allowance of a writ of error shall operate, after notice thereof, as a stay of proceedings in the circuit court, until the determination. But writs of error without supersedeas shall issue as writs of right, as in other cases.

Appeals and writs of error allowed.

APPROVED, Dec. 28, 1826.

REPLEVIN.

In force,
June 1,
1827.

AN ACT to regulate the Action of Replevin.

In what
cases the
action of
replevin
will lie.

Oath of
pl^{ff}.

And bond.

Commence-
ment of the
action by
plaint and
summons.

Returno
habendo.

And dama-
ges.

Damages
for pl^{ff}.

How as-
sessed in
either case.

Condition
of a bond
being brok-
en, action
may be
main-
tained
therefor.

Sheriff fail-
ing to take
bond, shall
pay dama-
ges.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the action of replevin shall be maintainable in all cases where any goods or chattels shall be taken from any person lawfully possessed of the same, without his or her consent, and the person or persons bringing such action, shall, before any writ shall issue, make oath or affirmation before the clerk of the circuit court, or any justice of the peace of the county, that the property (describing it) about to be replevied, rightfully and *bona fide* belongs to him or them, and is unlawfully detained, and that the same was not taken in execution for the payment of debt, nor for the payment of taxes; and moreover, before the execution of the writ, shall give bond to the sheriff, with good and sufficient security, in double the value of the property about to be replevied, conditioned that he or they will prosecute such suit to effect, and without delay, and make return of the property, if return thereof shall be awarded, and save and keep harmless the said sheriff in replevying such property: and the sheriff shall thereupon serve such writ, and deliver the property therein mentioned, to the party suing out such writ.

SEC. 2. The proceedings in an action of replevin shall be commenced by *plaint*, with a summons to the defendant, in which shall be stated a description of the property to be replevied, and the sheriff shall return the bond by him taken, and return the same, with the writ, to the clerk, who shall file the same.

SEC. 3. If any plaintiff in the action of replevin shall fail to prosecute his suit with effect, and without delay, or shall suffer a nonsuit or discontinuance, or if the right of property shall be adjudged against him, the court shall give judgment for a return of the property taken, and damages for the use of the property from the time it was taken until return thereof shall be made; and if judgment be given for the plaintiff, he shall recover damages for the detention of such property while in the possession of the defendant; and the damages in either case shall be assessed by the jury in case of a trial; but if the plaintiff shall not prosecute his suit, or if judgment shall in any manner be given for the defendant, without a trial, the damages in such case may be assessed by the court, on hearing such testimony as may be offered on the subject.

SEC. 4. If at any time the condition of the bond required by the first section of this act shall be broken, the sheriff, or plaintiff, in the name of the sheriff, to his own use, as the case may be, may sue and maintain an action on such bond, for the recovery of such damages as may have been sustained in consequence of the breach of such condition.

SEC. 5. If any sheriff shall fail to take and return a bond, as required by the first section of this act, or shall return an insufficient bond, such sheriff shall pay to the party injured all damages which he may sustain, or be put to, in consequence of such neg-

lect; to be recovered by an action on the case in the circuit court.

SEC. 6. The oath required in the first section, may be made by an agent of the plaintiff or claimant, in which case it shall be sufficient to state, on oath, that he has good reason to believe, and does verily believe, the right of property is in the plaintiff, and unlawfully withheld. Oath may be made by agent.

SEC. 7. It shall be sufficient for the defendant, in all cases of replevin for distress taken for rent, to avow or make cognuzance generally, without particularly setting forth the tenure or title to the lands whereon such distress was taken. General avowry and cognuzance in case of distress for rent.

This act to take effect on the first day of June next.

APPROVED, Jan. 29, 1827.

RECORDER.

AN ACT relating to the office of Recorder.

In force
1st July,
1829.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That there shall be an office of recorder in each and every county, which shall be called and styled "the recorder's office," and shall be kept in some convenient place at the county seat, in the respective counties; and the recorder shall duly attend* to the duties of the same, and at his own proper costs and charges shall provide parchment, or good, large, well bound books, of royal or other large paper, wherein he shall record in a fair and legible hand, all deeds and conveyances, which shall be brought to him for that purpose, according to law. Recorder's office established. Recorder to provide books and record deeds.

SEC. 2. All deeds to be recorded in pursuance of this act, whereby any estate of inheritance, in fee simple, shall hereafter be limited to the grantee and his heirs, the words *grant, bargain, sell,* shall be adjudged an express covenant to the grantee, his heirs and assigns, to wit:—That the grantor was seized of an indefeasible estate, in fee simple, freed from incumbrances, done or suffered from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed: And that the grantee, his heirs, executors, administrators, and assigns, may in any action assign breaches, as if such covenants were expressly inserted; *Provided, always,* that this law shall not extend to leases at rack rent, or leases not exceeding one-and-twenty years, where the actual possession goes with the lease. The words "grant, bargain and sell."

SEC. 3. Every mortgagee of any real or personal estate, in this state, having received full satisfaction and payment of all such sum or sums of money as are really due to him or her from the mortgagor, shall, at the request of the mortgagor enter satisfaction upon the margin of the record of such mortgage, in the recorder's Proviso. Mortgagees. Satisfaction thereof

office, which shall forever thereafter discharge and release the same, and shall bar all actions or suits brought, or to be brought, thereupon.

Refusal to enter satisfaction.

SEC. 4. If such mortgagee, by himself or herself, his or her attorney, shall not, within three months after request, and tender made of his or her reasonable charges, repair to said office, and there make acknowledgment as aforesaid, he or she neglecting or failing so to do, shall, for every such offence, forfeit and pay to the party or parties aggrieved, any sum not exceeding the mortgage money, to be recovered in any court of record, by action of debt.

Amended: See following act. Recorders, how to be appointed.

SEC. 5. The governor, by and with the advice and consent of the senate, shall appoint a recorder in every county, now or hereafter to be created, where there is no recorder already appointed in such county. But before any of the recorders enter upon the duties of his office, he shall become bound to the governor and his successors in office, with one or more sufficient sureties, in a bond of five hundred dollars, conditioned for the true and faithful execution of the duties of his office, and to deliver up the records and other writings belonging to his office, safe and undamaged, to his successors in said office: which said respective bonds shall be filed in the secretary's office, and there safely kept, in order to be made use of, for making satisfaction to the parties that shall be damaged or aggrieved, as is or shall be in such cases directed by law.

To give bond.

Penalty for neglecting to give bond.

SEC. 6. And no recorder whatsoever, now or hereafter to be appointed, as aforesaid, shall enter upon or officiate in his said office, before he hath given such security, as aforesaid, upon pain of forfeiting the sum of one hundred dollars, one half to the state, and the other half to him or them that shall sue for the same, to be recovered as aforesaid: but no record made by him shall be vacated or so avoided as to operate against the parties to the instrument recorded, by reason of such recorder not giving such bond.

Entry book.

SEC. 7. Every recorder shall keep a fair book, in which he shall immediately make entry of every deed or writing brought into his office to be recorded, mentioning therein the date, the parties and the place where the lands, tenements, or hereditaments granted or conveyed by the said deed or writing are situate, dating the entry on the day on which such deed or writing was brought into his office, and shall record all such deeds and writings in regular succession, according to the priority of time of their being brought into said office; and shall also make and keep a complete alphabetical index to each record book, shewing the page on which each instrument is recorded, with the names of the parties thereto: he shall give a receipt to the person bringing such deed or writing to be recorded, bearing date on the same day as the entry, and containing the abstract aforesaid, for which entry and receipt he shall be entitled to no fee or compensation whatever.

Deeds to be recorded in succession.

Index.

And receipt

SEC. 8. The act entitled "An act establishing the recorder's office, and for other purposes," approved, February 19, 1819, is hereby repealed; but nothing herein contained, shall be so construed as to affect or remove from office any recorder appointed

Acts repealed.

under that act, but he shall continue in office, as though this act had not been passed, nor shall any of his legal acts, as such, be hereby impaired.

This act to take effect on the first day of July next.

APPROVED, January 8, 1829.

AN ACT to provide for the Election of County Recorders and Surveyors.

In force Feb. 11, 1835.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That from and after the first Monday in August next, so much of the fifth section of an act, entitled "An act relating to the office of Recorder," approved, January 8th, 1829, as provides that the Governor, by and with the advice and consent of the Senate, shall appoint a recorder in every county; and so much of the first section of said act as requires the recorder to furnish, at his own proper cost, well bound books for the recording of deeds, and the first section of the act regulating the appointment and duties of county surveyors, approved, January 14th, 1829, be, and the same are hereby repealed.

Parts of certain laws repealed.

SEC. 2. That an election shall be held on the first Monday in August next, and on the first Monday in August in every fourth year thereafter, in each county in this State for a county recorder and surveyor, which county recorder and surveyor, so elected, shall continue in office for the term of four years, and until their successors shall be elected and qualified to office respectively.

County Recorder and Surveyor elected every four years.

SEC. 3. The election herein provided for, shall, in all things be conducted, and returns thereof be made, as provided by the "act regulating elections," approved, January 10th, 1829, to the office of Secretary of State, and upon such election being made, the Governor shall commission such county recorder and surveyor to continue in office for four years; which commission shall be transmitted by the Secretary of State to the clerk of the circuit court of the proper county, and it shall be the duty of said clerk to give immediate notice to such recorder or surveyor of the receipt of his commission.

Elections how conducted.

SEC. 4. The said recorders, previous to entering upon the duties of their office, shall enter into bond as now required by law, the securities to which shall be approved by the county commissioners' courts of the respective counties for which said recorders are elected.

Recorder to give bond.

SEC. 5. The election provided for by this act, shall be held at the same time and places, and conducted in all respects as is now provided for by the law for elections of justices of the peace, and all vacancies shall be filled in the same manner; and contested elections for recorders and surveyors, shall be regulated as provided

Vacancies how filled.

Contested elections.

for in the mode prescribed for contesting elections for sheriffs and coroners.

County commissioner to provide record book, &c.

Compensation of judges and clerks of election.

SEC. 6. It shall be the duty of the county commissioners' court to provide the county recorders of their respective counties with well bound books necessary to the execution of the duties of his office, to be paid for out of the County Treasury, and that the county commissioners' courts of the several counties, be, and they are hereby required to pay the said judges and clerks of election out of the County Treasury, not exceeding one dollar per day, and also, such reasonable allowance to the person carrying the return of such elections to the county seat, as they may deem just, not exceeding six cents per mile for going only.

JAMES SEMPLE, *Speaker House Rep.*

A. M. JENKINS, *Speaker of the Senate.*

This bill having been returned by the Council of Revision, with their objections to the same becoming a law, and the same having been reconsidered, and again passed both houses by a majority of the whole number of members elected, the objections of the Council notwithstanding, the same has become a law of this State.

JAMES M. SEMPLE,

Speaker of the House of Representatives.

A. M. JENKINS, *Speaker of the Senate.*

February 11th, 1835.

In force Feb. 13, 1835.

AN ACT supplemental to an act to provide for the Election of County Recorders and Surveyors.

County recorders heretofore appointed, to continue in office until their successors are qualified.

Surveyors.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the recorders appointed to office by and under the provisions of an act, entitled "An act relating to the office of recorder," approved January 8th, 1829, shall be and remain in office and perform and discharge all the duties required of them by law, until their successors shall be duly chosen and qualified to office by and under the provisions of the act to which this is a supplement.

SEC. 2. That the surveyors appointed to office by and under the provisions of "An act regulating the appointment and duties of county surveyors," approved, January 14th, 1829, shall be and remain in office and perform and discharge all the duties required of them by law, until their successors shall be duly chosen and qualified to office by and under the provisions of the act to which this is a supplement.

Contested elections.

SEC. 3. That in case of a contested election between any two or more persons, who shall have been voted for, for the office of county recorder or of county surveyor, a commission shall not issue to such person until such contest shall have been duly decided according to the provisions of the law in force relative to elections.

SEC. 4. That the act to which this is a supplement, shall be

construed to vacate the office of all recorders and surveyors, as well those appointed under the act of the 19th February, 1819, as those under the act of January 8th, 1829, subject, however, to the continuance in office, as is provided in and by the first and second sections of this act. *Offices vacated.*

SEC. 5. That the county commissioners of each county in this State, shall provide for the payment to each of the several recorders who shall be superseded in office under the act to which this a supplement, a reasonable compensation for books used as record books in his office. *Recorders superseded in office, to be paid for books.*

This act to be in force from and after its passage.

APPROVED, Feb. 13, 1835.

RELIGIOUS SOCIETIES.

AN ACT concerning Religious Societies.

In force March 1, 1835.

WHEREAS, petitions are frequently presented to the legislature of the State to incorporate religious societies; and, whereas, if said acts of incorporation were granted, it would lead to an endless system of partial legislation; and whereas, all religious societies, of every denomination, should receive equal protection and encouragement from the legislature, and no one society be granted exclusive privileges: Therefore— *Preamble.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall be lawful for the members of any society or congregation heretofore formed in this State for purposes of religious worship, and for members of any society or congregation which may hereafter be formed for the purpose aforesaid, to purchase a quantity of land not exceeding five acres, and to erect or build thereon, such houses and buildings as they may deem necessary for the purposes aforesaid, and to make such other use of the land, and make such other improvements thereon as may be deemed necessary for the comfort and convenience of such society or congregation; and such society or congregation may assume a name and elect or appoint any number of trustees, not exceeding ten, who shall be styled trustees of such society or congregation by the name assumed, and the title to the land purchased and improvements made, shall be vested in the trustees, by the name and style assumed as aforesaid. *Religious societies may become incorporated. May elect or appoint trustees.*

SEC. 2. Immediately after the election or appointment of trustees by any society or congregation as aforesaid, the persons elected or appointed, shall make a certificate, under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and the length of time for which they were elected or appointed, which shall be verified by the affidavit of some one of the persons making the same, and shall be recorded by the recorder of the county in which such society or

Appointment how verified.

congregation may be formed, and the said trustees shall hold their office for and during the period stated in the certificate aforesaid. And at the expiration of their term of service and forever thereafter, at the expiration of the term of service of any trustee elected or appointed as aforesaid, the said society or congregation shall elect or appoint successors, who shall, in like manner, continue in office for such period as may be limited by the society or congregation, and a certificate of their election or appointment shall be made by the trustees whose term of service shall have expired, which shall be verified by affidavit, and recorded as provided in the election or appointment of trustees in the first instance.

Shall have perpetual succession.

SEC. 3. The trustees elected or appointed under the provisions of this act, and their successors, shall have perpetual succession and existence, and the title to land herein authorized to be purchased, and to the buildings and improvements thereon, shall be vested in the said trustees by their assumed name, and their successors forever; and the same shall be held for the uses and purposes herein named and no other; and such trustees shall be capable in law, to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law or equity whatsoever, in and by the name and style assumed as aforesaid; and shall have power, under the direction of the society or congregation, to execute deeds and conveyances of, and concerning the estate and property herein authorized to be held by such society or congregation; and such deeds or conveyances shall have the same effect as like deeds or conveyances made by natural persons: *Provided*, That no deed or conveyance shall be made of any estate held as aforesaid, so as to defeat or destroy the interest or effect of any grant, donation or bequest which may be made to any such society or congregation, but all grants, donations, and bequests shall be appropriated and used as directed by the person or persons making the same.

Their powers.

Society to fill vacancies.

SEC. 4. Every society or congregation formed as aforesaid, shall have power to provide for filling vacancies which may happen in the office of trustee, and also to remove trustees from office, and to adopt such rules and regulations in relation to the duties of trustees, and the management of its estate as the members may deem proper, not inconsistent with the constitution and laws of this State or the United States.

When any society shall be dissolved

SEC. 5. Upon the dissolution of any society or congregation formed under the provisions of this act, the estate and property of such society or congregation shall revert back to the persons, their heirs and assigns, who may have given or contributed to the purchase of, or payment for the same, according to their respective rights. A failure to elect or appoint trustees at any time when, by the provisions of this act, such election or appointment should be had, shall not work a dissolution of the society or congregation, but the trustees last elected or appointed, shall be considered as in office until another election or appointment shall take place.

This act shall take effect on the first day of March next.

APPROVED, Feb. 6, 1835.

REVENUE.

AN ACT for the relief for certain persons whose lands have been sold for taxes. In force Feb. 13, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That in all case where the taxes on any tract of land have been paid to the sheriff of any county, and the same land has been subsequently sold by the auditor of public accounts for said taxes, by reason of the said lands not being correctly described in the tax book of the county, or by reason of any official mistake; in every such case, the auditor shall, upon its being made manifest to him that the said taxes have been paid into such county, and the land was nevertheless sold afterwards by the said auditor to an individual for the same taxes, to make an entry thereof in his books, giving a brief history of the case, and issue his warrant on the treasury in favour of the purchaser of any such land, when required, for the amount it was sold for: *Provided*, That application be made therefor, before the expiration of the time allowed by law for the redemption of the same.

Auditor to preserve evidence of sale of certain lands &c.

SEC. 2. In all cases where land may have been stricken off to the State for the non payment of taxes, the same may be redeemed at any time, by the payment of single tax for each year in arrears, together with all costs, and interest at the rate of six per cent. per annum, from the time such tax became due, until paid.

State lands how redeemed.

APPROVED, Feb. 13, 1827.

AN ACT to provide for raising a Revenue. In force March 1, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That all lands claimed by individuals or bodies politic or corporate, whether by deed, entry, bond for conveyance, patent, grant, or otherwise, except town lots, lands belonging to the United States or this state, and such other lands as are exempted from taxation, by virtue of the compact between the United States and this state, are hereby declared subject to taxation; and, for that purpose, are hereby divided into classes, valued and taxed as follows: Lands of the first quality shall compose the first class, shall be valued at four dollars, and taxed at the rate of two cents per acre; lands of the second quality shall compose the second class, shall be valued at the rate of three dollars, and taxed at the rate of one and a half cents per acre: lands of the third quality shall compose the third class, shall be valued at two dollars, and taxed at the rate of one cent per acre.

In force March 1, 1827.

Lands taxable.

Classes. Amended: See act of Feb. 12, 1831, Sec. 2

SEC. 2. All non-residents owning or claiming lands in this state, shall, either by themselves or agents, enter the same in the office of the auditor of public accounts, particularly describing the land, and the class to which each tract belongs, accompanied with an affidavit.

Non-residents to enter lands in Aud. office.

vit of such non-resident or his agent, stating that such list contains a true classification and description of the property therein described, to the best of the deponent's knowledge and belief. Such non-resident shall not be required to list his lands more than once; but the auditor shall annually charge the lands, described in such list, with tax according to the description contained in the same, until it shall be listed in a different manner. Every non-resident shall pay into the state treasury, on or before the first day of August, annually, the tax imposed upon his land by this act.

How abstracts may be obtained.

SEC. 6. The auditor is hereby empowered, from time to time, to contract for and obtain from the several land offices, at which lands lying within this state are sold, abstracts containing a description of lands entered in such land offices, the date of entry, and the names of patentees, together with the maps of such parts of the several land districts, as lie within this state, in all cases where such maps have not been already procured by him. He is also authorized to obtain as aforesaid, as often as it shall be necessary, abstracts of all lands relinquished to the United States.

Maps and books to be made for counties.

SEC. 7. As soon as practicable after the passage of this act, the auditor shall cause maps to be made of the several counties in which taxable lands are contained, on a scale of one inch to the mile, designating thereon by appropriate characters, the lands reserved for seminary, school, saline, and other public purposes, the lands which have been divided into town lots, the lands which have been purchased of the United States, and those which have been relinquished. He shall also cause to be made, for each of the counties aforesaid, a well bound book containing a description of every tract of land within such county, with the date of its purchase from the United States, leaving sufficient space between the lines to insert the description of a subdivision of any tract. To the description of each tract shall be prefixed the name of the patentee, and of the present owner where the same is known. The tracts shall be arranged according to situation, beginning with the lowest number of range, township, and section. The lands which belong to residents of the county, shall be designated by the word *resident*, those belonging to persons residing in other counties of this state, by the words resident of county (naming the county in which the owner resides;) those belonging to persons not residing within this state, by the letters *N. R.*; those reserved for the use of schools, by the letters *S. L.*; those reserved for the use of a seminary of learning, by the word *Seminary*; those reserved for saline purposes by the word *Saline*; and those which have been divided into town lots, by the name of *The Town*. But no land shall be considered as having been divided into town lots, until a plat of the town shall have been recorded as required by law.

And how made.

Books and maps to be delivered to C. C. clerk.

SEC. 8. On or before the first day of April next, or as soon as practicable thereafter, the auditor shall cause to be delivered to the clerk of the commissioners' courts of each of the several counties, containing taxable lands, a map and book, made and compiled according to the provisions of the preceding section of this act. The said clerk shall keep said map and book in his office, subject to the inspection of any person who may wish to examine the same, and shall, from time to time, correct such inaccuracies, and supply such defects, as may come to his knowledge.

SEC. 9. At their March term, annually, or as soon thereafter as may be, the county commissioners' courts of the several counties in this state, shall appoint some fit person to act as a county treasurer, who shall, before he enters upon the duties of his office, take and subscribe the following oath, to wit: "I, A. B. treasury of the county of in the state of Illinois, do solemnly swear (or affirm) that I will faithfully, impartially, and to the best of my skill and judgment perform the duties required of me by law, as treasurer of said county of A. B. Sworn to and subscribed before me this day of 18 before me C. D. justice of the peace of county."

**Amended. Provision for appointing county treasurer.*

His oath.

SEC. 10. Said county treasurer, before he enters upon the duties of his office, shall also execute a bond, in such penalty and with such security as the county commissioners shall deem sufficient; which bond shall be in the following form, to wit: "Know all men by these presents, that we, A. B. principal, and C. D. and E. F. securities, all of the county of and state of Illinois, are held and firmly bound to the people of the state of Illinois, in the penal sum of dollars, for the payment of which well and truly to be made, we bind ourselves, each of us, our heirs, executors, and administrators, firmly by these presents; signed with our hands, and sealed with our seals, dated at the day of 182. The condition of the above bond is such, that if the above bound A. B. shall perform all the duties required by law to be performed by him, as treasurer of the said county of in the time and manner prescribed by law; and when he shall be succeeded in office, shall surrender and deliver over to his successor in office, all books, papers, and moneys belonging to said county, and appertaining to his said office, then the above bond to be void, otherwise to remain in full force. A. B. [SEAL.] Signed, sealed, and delivered } C. D. [SEAL.] in presence of G. H." } E. F. [SEAL.]

Form of bond.

SEC. 11. It shall be the duty of the sheriff of each county, as soon as a county treasurer for such county shall have been appointed and qualified to office, as herein provided, to deliver over to such county treasurer all books and papers properly appertaining to the office of county treasurer, and to pay over to him all moneys in his hands belonging to the county, taking the treasurer's receipt for the same.

Sheriff to deliver books, &c. to treasurer.

SEC. 12. On or before the tenth day of April, annually, the clerk of the commissioners' court shall furnish the county treasurer with a transcript from the book received by him from the auditor, which transcript shall contain a list of all the taxable lands in the county, except such as are known to be owned by persons residing out of the county, with the names of the patentees, and of the present owner, where the same are known.

Duty of clerk.

SEC. 13. On or before the tenth day of April, annually, or as soon thereafter as he shall receive from the clerk the transcript aforesaid, the county treasurer shall proceed to take lists of taxable lands, and of all other taxable property upon which the county commissioners' court shall have ordered a tax to be levied for the

Duty of treasurer.

current year. The county treasurer shall call at the place of residence of each owner of taxable property, for a list of the same; and if any such owner shall be absent, he shall list such person's taxable property, according to the best information he can obtain; which list may be corrected by the owner, under oath, on application to the county treasurer, at any time before he shall have returned the tax list, to the clerk of the commissioners' court. The county treasurer is hereby authorized and required to administer an oath or affirmation to every person who may give him a list of his taxable property, touching the quality and description of his lands, and the quantity and value of his other taxable property. The county treasurer shall finish taking lists of taxable property previous to the first day of August, annually. He shall note upon the transcript furnished by the clerk all errors and deficiencies which he may discover in the same, inserting the name of the present owner of each tract, where it has not been previously done; and the clerk of the county commissioners' court shall, in the presence of the county treasurer, proceed to make the necessary corrections and alterations in the book furnished by the auditor.

How property is listed

To note errors.

Power of county courts in levying taxes.

SEC. 15. Whenever in their opinion the revenue arising to the county from the tax on lands shall be insufficient to defray the county expenses, the county commissioners' court shall have power to levy a tax not exceeding one half per cent. upon the following descriptions of property, viz: on town lots, if such lots be not taxed by the trustees of such town, on slaves, and indentured or registered negro or mulatto servants, on pleasure carriages, on distilleries, on stock in trade, on all horses, mares, mules, asses, and neat cattle, above three years of age, and on watches with their appendages, and such other property as they shall order and direct.

SEC. 16. When a tax shall be ordered to be levied on other property besides lands, the county treasurer shall make out an abstract of the property so taxed, which abstract shall be separate from the list of taxable lands. Said abstract shall as near as circumstances will permit, be in the following form, to wit:

Form of abstract.

List of property taxed by the commissioners' court of _____ county, for the year 18____, with the owners' names, valuation of said property, and amount of tax thereon:

Names of Owners.	Town Lots.		Slaves and servants of color.		Pleasure carriages.		Value of stock in trade.	Distilleries.																					
	Nos.	Value.	Nos.	Value.	Nos.	Value.																							
Richard Roe.	3	\$150	1	\$175	2	\$300	\$4,500	\$600																					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2">Horses, Mares, &c.</th> <th colspan="2">Watches.</th> <th colspan="2">Total value of property.</th> <th>Total</th> </tr> <tr> <th>Nos.</th> <th>Value.</th> <th>No.</th> <th>Value.</th> <th colspan="2"></th> <th>am't tax.</th> </tr> <tr> <td>15</td> <td>\$300</td> <td>1</td> <td>\$30</td> <td colspan="2">\$6,255</td> <td>\$31 27</td> </tr> </table>									Horses, Mares, &c.		Watches.		Total value of property.		Total	Nos.	Value.	No.	Value.			am't tax.	15	\$300	1	\$30	\$6,255		\$31 27
Horses, Mares, &c.		Watches.		Total value of property.		Total																							
Nos.	Value.	No.	Value.			am't tax.																							
15	\$300	1	\$30	\$6,255		\$31 27																							

Which list, or abstract, the county treasurer shall deliver to the

clerk of the commissioners' court, on or before the first day of August, annually.

SEC. 17. The clerk of the commissioners' court, in each county, except those on the military tract, shall charge the sheriff with the amount of tax on all lands lying within the county, owned by residents thereof, and with the amount of tax on such other property as shall have been ordered to be taxed by the commissioners' court; and shall then deliver said lists or abstracts of lands and other taxable property to the sheriff who shall proceed to collect the taxes thereon, by calling upon each owner of the same, at his or her place of residence. If any owner of taxable property shall be absent from home, at the time when the sheriff shall call for the tax, the sheriff shall leave at such person's residence a written notice, stating the amount of tax due from him, and notifying him to pay the same to said sheriff previous to the fifteenth day of October thereafter. On receiving any taxes, the sheriff shall give the person paying the same a written or printed receipt for the same; and when any tax is paid to him on land, he shall, in his receipt, describe the same as particularly as it is described in the tax list.

Sheriff to be charged with amount of taxes.

Manner of collecting taxes.

Sheriff to give special receipt.

SEC. 18. The sheriff shall settle with the clerk of the county commissioners' court, on the first Monday in December, annually; and said clerk shall allow the sheriff a credit for all taxes which he shall have been unable to collect by reason of there being no bidder for the property when exposed to sale for the taxes, and the amount found due to the county, the sheriff shall immediately pay into the county treasury; and for failure to pay the same as aforesaid, the sheriff shall forfeit to the county one per cent. per week upon the whole amount so remaining unpaid.

When settlement to be made.

SEC. 19. Each sheriff shall keep a regular account or abstract of all sums received by him in payment of taxes, describing the amount and kind of funds in which such taxes were paid, which abstract shall be as near as circumstances will admit, in the following form:

Sheriff to keep account of kinds of money received.

An account of the moneys and public securities received by A. B. Form, sheriff of the county of _____ in the payment of taxes, during six months, ending the day of _____ 18____.

When Received	Of whom rec'd	Illinois state paper.		Auditor's Warrants.		County Orders	Current Money.	Total amount received
		Nom. am't.	In'ts all'd	Nom. am't.	In'ts all'd			
Sept. 5.	J. D.	\$5 00	\$,55	\$10	\$45	\$7 50	\$0 12	\$23 62

A copy of which abstract the sheriff shall deliver to the clerk of the commissioner's court at the time of making his settlement with the county; and the clerk shall keep the same in his office, subject to the inspection of any persons who may wish to examine the same. The sheriff shall be required to pay over to the county treasurer the taxes belonging to the county, in as good funds as he shall have received. When the sheriff shall pay over to the county treasurer any moneys or public securities, received by him for the county, said treasurer shall give the sheriff a receipt therefor,

specifying particularly the amount of each kind of funds in which such payment was made.

Provision for the counties in the military tract.
 SEC. 21. In lieu of the taxes paid by residents of the several organized counties, on the military bounty tract, upon lands lying in said counties, the state treasurer shall pay on the warrant of the auditor to the county commissioners of each of the counties of Pike, Fulton, Peoria, Calhoun, Adams, and Schuyler, for the use of the county, the sum of two hundred and seventy-five state paper dollars, annually; and any county which may hereafter be organized upon the military tract, shall, upon its organization, be entitled to receive a similar sum, from the state treasury.

Further duty of clerks.
 SEC. 22. The clerk of the commissioners' court of each of the several counties on the military bounty tract shall, on or before the first day of August, annually, transmit to the auditor, by mail or otherwise, a correct list of all lands listed for taxation in such county.

Further duty of clerks.
 SEC. 23. The clerk of the commissioners' court of each of the counties in this state, except those on the military tract, shall, on or before the first day of August, annually, transmit to the auditor, by mail or otherwise, a list of all taxable lands in the county, which shall not have been listed for taxation in such county, and which are not known to belong to residents of the same. All taxable lands which shall not be known to belong to residents of the counties in which they are situated, shall be charged with tax, advertised, and sold in the same manner as lands belonging to non-residents.

Provision for enforcing the collection of residents' tax.
 SEC. 24. If any person after having been called upon by the sheriff to pay his tax, shall neglect or refuse to pay the same for the period of twenty days after such notice, the sheriff shall proceed to advertise such portion of such person's taxable property as he shall deem sufficient, on the court house door, and in three other of the most public places in the county, giving in such advertisement fifteen days notice of the time and place of sale, and particularly describing the property to be sold; at the time and place appointed, unless the taxes and costs shall have been previously paid, the sheriff shall proceed to sell said property, or so much of it as will bring the amount of tax and costs. The land of delinquents residing in the state shall not be sold by the sheriff for taxes until all their personal property, except such as is exempted by law from execution, for the payment of debts, shall have been previously sold. Whenever the sheriff shall sell any tract of land for taxes thereon, he shall give the purchaser thereof a deed, as near as circumstances will admit, in the form prescribed by this act for similar deeds, executed by the auditor of public accounts. If any tract of land, when offered for sale by the sheriff for the taxes and costs thereon, will not sell for the amount thereof, the county shall be considered the purchaser of the same.

SEC. 25. All sales of lands for taxes, whether by the auditor or sheriff, the officer selling shall, previous to the sale, designate in what part of the tract the part sold shall be located, and shall give his certificate or make his deed accordingly.

Duty of sheriff and
 SEC. 26. The sheriff shall make return to the clerk of the commissioners' court of all lands sold by him for taxes, designating

particularly the part sold; and said clerk shall make a record thereof in his office. The former owner, or any person for him, may redeem any such land within two years thereafter, by paying into the county treasury on the certificate of the clerk of the commissioners' court double the amount for which it was sold, together with all subsequent taxes thereon; and said clerk, on the presentation of the county treasurer's receipt, shall give to the person applying, a certificate of the redemption of such land. The person who purchased said land, at the tax sale, or his legal representative, may draw from the county treasury on the certificate of the clerk as aforesaid, the sum so paid in redeeming such land, together with all subsequent taxes, which he may have paid thereon. Heirs under lawful age, owning any lands sold for taxes by the sheriff, shall have the same rights to redeem their lands as are given to such persons in the case of lands sold by the auditor.

SEC. 28. The books and records belonging to the office of the auditor of public accounts shall be deemed sufficient evidence to prove the sale of any tract of land for taxes, or the redemption of the same, or the payment of taxes thereon.

SEC. 29. No sheriff or deputy sheriff, during his continuance in office shall be eligible to the office of county treasurer, nor shall any county treasurer be permitted to act as deputy sheriff.

SEC. 30. It shall be the duty of the state treasurer, and of the several sheriffs to receive in payment of taxes, notes of the bank of the United States, gold and silver coins, notes of the state bank of Illinois, or either of its branches, auditor's warrants; and the sheriffs shall also receive county orders at par in payment of any taxes which are to be paid into the county treasury. That all warrants issued by the auditor under the several laws passed the present session, shall be received in payment of debts due the state, or state bank of Illinois, or its branches.

SEC. 31. It shall be the duty of the auditor of public accounts, upon the application of any person indebted to the state, to specify in a certificate directed to the treasurer, the amount of such demand, designating particularly the branch of revenue on which it is due, and if on lands, describing distinctly each tract, and the amount due thereon; such certificate being presented to the treasurer, he shall receive the amount due, and give the party duplicate receipts for the same, designating particularly as above, on what account the same has been paid, the amount paid, and, if on lands, describing each tract. The treasurer shall also endorse on one of the said duplicate receipts the kind, or kinds of funds, in which payment has been made; one copy of which receipt, so endorsed, shall be filed in the auditor's office, and the other copy shall be countersigned by the auditor, and the money receipted for shall be credited on the auditor's books, and the receipt countersigned by the auditor as aforesaid shall be delivered to the person making the payment. No payment shall be considered as having been made until the treasurer's receipt shall have been deposited in the auditor's office.

SEC. 32. It shall be the duty of the commissioners' court of each county to cause a complete statement in writing of the fiscal

clerk upon sale of lands of residents.

In what money taxes may be paid.

General provision for warrants.

Duty of auditor and treasurer in the receipt of taxes.

Statement of fiscal concerns to

be made out and posted up. concerns of the county to be made out at their December * term; annually; and the clerk of said court shall keep said statement posted up in his office for the period of one month at least, from the end of said term; and for failing to perform this duty, he shall pay a fine of ten dollars. Each county commissioner who shall neglect to cause such statement to be made out, shall also pay a fine of ten dollars, to be recovered by action of debt, at the suit of any individual, before any justice of the peace of the county; one half for the use of the county, and the other half with costs of suit, for the use of the person so suing.

Penalty for neglect.

Liability of sheriffs.

SEC. 33. If any sheriff shall corruptly receive taxes from any person, and fail to make a return of the same, or shall receive a greater sum than he shall make return of, such sheriff shall be liable to be indicted, and on conviction, shall be removed from office.

SEC. 34. When no tax shall be levied by the commissioners' court on town lots and personal property, it shall not be the duty of the county treasurer to go through the county to receive lists of taxable lands, unless he shall be required to do so by the commissioners' court, for the purpose of supplying deficiencies in the book furnished by the auditor.

Provision where resident removes.

SEC. 35. Whenever a person whose land is listed for taxation, in the auditor's office, shall remove into the county in which such land is situated, he shall be permitted to pay the taxes on the same in such county, on giving information in writing of such removal, to the auditor of the state, and to the clerk of the commissioners' court of the county. If any land listed in the auditor's office shall become the property of any resident of the county in which the land lies, such person shall also be permitted to pay the taxes on said land in the county on giving information as above provided. But until information shall be given as aforesaid, the auditor shall charge with tax, advertise, and sell lands in the same manner as provided in the case of non-residents. The taxes on land sold by the auditor for the taxes thereon shall, for two years after such sale, be paid into the state treasury; after which period, on giving information as aforesaid, the taxes on such lands may be paid into the treasury of the county in which the lands are situated, if the proprietor be a resident of such county.

Sheriff's compensation.

SEC. 36. The sheriff shall receive for advertising and selling any property for taxes, fifteen per cent. on the amount of such sales, such compensation to be added to the sum for which the property is sold.

Treasurer's compensation.

SEC. 37. The county commissioners' court shall allow the county treasurer for his services to be performed under this act, such compensation as they shall deem reasonable, not exceeding two dollars per day, for taking lists of taxable property, and two per cent. upon the moneys paid out of the county treasury.

Clerk's duty relative to county orders.

SEC. 38. The clerk of the commissioners' court shall, on or before the first Monday in December, annually, furnish the county

* Amended. See under head of County Commissioners "An act concerning public officers," approved Feb. 12, 1835.

treasurer with a certified list of all county orders issued by said court, during the twelve months immediately preceding that time, specifying the date, number, and amount of each, together with the name of the person in whose favor such order is drawn; and the county treasurers shall pay such orders according to their seniority.

SEC. 39. If any county treasurer shall fail or refuse to perform any of the duties required of him by law, he shall forfeit a sum not exceeding fifty dollars, nor less than twenty, to be recovered before any justice of the peace by action of debt; one half to the person suing for the same, and the other half to the use of the county.

Liability of treasurer.

SEC. 40. Whenever it shall appear to the satisfaction of the auditor, that any lands have been sold by him for taxes through mistake, when the same belonged to the United States, or were not legally subject to taxation, he shall, if such lands were sold to individuals, issue his warrant on the treasury, in favor of the purchasers, or their legal representatives, for the amount paid by them for the same; and if they were sold to the state, he shall cancel such sale; and such lands shall be considered in the same light, and charged with the same taxes, as if no such sale had taken place.

Lands sold by mistake how to proceed.

SEC. 41. The clerk of the commissioners' court shall be allowed such compensation for services to be rendered by him under this act, as said court shall deem just, to be paid out of the county treasury.

Clerks compensation.

SEC. 42. If the clerk of the commissioners' court of any county shall fail to receive from the auditor on or before the first day of April next, the map and book provided for by this act, it shall be lawful for the county treasurer to proceed to take lists of taxable property without the transcript herein provided for.

Liability of clerks.

APPROVED, Feb. 19, 1827.

AN ACT supplemental to an act, entitled "An act to provide for raising a Revenue." *In force Jan. 19, 1829.*

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That any resident of this state, owning lands in a county in which he does not reside, may list such lands, either in the county in which he resides, or in the office of the auditor of state. If he shall list such lands in the county, he shall pay the taxes thereon to the sheriff; but if such lands shall be listed in the auditor's office, the taxes thereon shall be paid into the state treasury. In listing lands lying in another county, the owner shall state particularly in what county each tract is situated: *Provided*, that in all cases where any part of the survey, or tract of land belonging to any individual, or individuals, shall be situated in the county in which such owner, or owners may reside, the whole survey or tract shall be listed for taxes, in said

Residents may list their land either with the auditor or in the county. If listed in the county. If listed with the auditor. The county to be stated. Part in two counties.

Lands on which partial payments have been made to the U. S.

Settlement of sheriff, when made. What money to be paid into county treasury. Counties on the bounty lands.

Per cent. to sheriffs.

Duty of county treasurer.

Clerk co. com. to transmit list to the auditor. His duty to sell.

Clerk to be paid for transcript.

Clerk shall note the lands listed with him, lying out of the county. And correct inaccuracies.

Auditor may send a messenger for such list.

county, as resident lands: *And provided, also, that in all cases where partial payments only shall have been made to the United States for any lands listed for taxation, as aforesaid, the taxes to be paid thereon shall be in proportion to the instalments which shall have been paid thereon, as aforesaid.*

SEC. 2. The sheriff shall settle with the county commissioners' court, at the March term of said court, in each and every year, which settlement shall be entered on the records of said court; and shall pay into the county treasury, on or before the first Monday of March, annually, the whole of the tax collected by him, on property taxed by order of the county commissioners' court; and in all counties, except those on the military bounty tract, the sheriff shall also pay into the county treasury the whole amount of the tax collected by him on lands lying within the county. In lieu of the taxes paid by residents of the several organized counties on the military bounty tract, upon lands lying in said counties, the state treasurer shall pay, on the warrant of the auditor, to the county commissioners of each of the counties of Pike, Adams, Fulton, Calhoun, Peoria, and Schuyler, for the use of the county, the sum of seventy-five state paper dollars, annually, in addition to what the said counties received for the last two years; and any county which may hereafter be organized upon the military tract, shall, upon its organization, be entitled to receive a similar sum out of the state treasury. All the taxes on lands lying in the military bounty tract, and all the taxes collected by him on lands lying without the limits of his county, shall be paid by the sheriff, on or before the first Monday of March, annually, into the state treasury, deducting seven and a half per cent. as his compensation for collecting the same; and a similar compensation shall be allowed to all sheriffs for collecting taxes on real or personal property.

SEC. 3. The county treasurer shall finish taking in the list of taxable property, and make his return to the clerk of the county commissioners' court, on or before the first day of July, annually; and on or before the fifteenth day of July, the clerk of the county commissioners' court shall transmit to the auditor, by mail, a transcript of all lands listed for taxation in his county; and all lands not listed in the county, shall be sold as non-resident lands by the auditor, if said lands are not listed, and taxes thereon paid to him, as provided in the first section of this act. For the transcript of the list of taxable lands, listed in the county, the clerk of the county commissioners' court shall be entitled to two cents for each tract described in such transcript, to be paid out of the state treasury.

SEC. 4. It shall be the duty of the clerk of the county commissioners' court to insert, in an appendix to the book received by him from the auditor, a full and complete list and description of all lands lying out of the county, but listed with him, or with the county treasurer, by residents of the county. And the clerk shall correct such inaccuracies, and supply such defects, in said list, as may, from time to time, come to his knowledge.

SEC. 5. If the transcript of taxable lands, listed for taxation in any county, shall not be received at the auditor's office on or before the first day of August in any year, it shall be the duty of the auditor to send a messenger to the clerk of the county commission-

ers' court of such county, to demand such transcript, and it shall be the duty of said clerk to deliver the same to the messenger without unnecessary delay; said messenger shall be entitled to receive out of the state treasury, on the warrant of the auditor, ten cents for each mile necessarily travelled by him, in going after said list, and returning to the seat of government. If the clerk of the commissioners' court of any county shall neglect to transmit said list to the auditor at the time and in the manner required by law, he shall forfeit and pay the sum of twenty-five dollars, to be recovered by action of debt, with costs of suit, in the name of the auditor, for the use of the state, before any court having cognizance of the same.

SEC. 6. The sheriff shall not, in any case, sell for tax esany land not lying within his county: but if he cannot obtain the taxes on such land by the sale of the personal property of such delinquent, he shall certify the fact to the auditor, who shall credit the sheriff with the amount of such delinquencies, and proceed to advertise and sell such lands, in the same manner, and at the same time, as the lands of non-resident delinquents.

SEC. 7. If any sheriff shall fail to pay over to the county treasurer the amount of taxes due, or other moneys belonging to the county on or before the first Monday of March, annually, it shall be the duty of said treasurer to inform the county commissioners' court of every such failure, at their March term, which court shall thereupon issue a citation to such delinquent sheriff, to be served by the coroner, or any constable of said county, requiring him to attend and shew cause at said term, why judgment should not be entered against him. And upon hearing and examining the case, the said court shall proceed to enter up a judgment in favour of the county treasurer, for the amount due from said sheriff; and the clerk of said court may issue execution thereon, directed to the coroner, or any constable of said county, returnable as in cases of execution issued by the clerk of the circuit court.

SEC. 8. Whenever, in the opinion of the county treasurer, any person shall list his property below its real value, it shall be the duty of said treasurer to alter the valuation thereof, in such manner as to make it as nearly equal to the general valuation of the same species of property as possible; and no person shall be compelled to value his property under oath.

SEC. 9. In describing the lands advertised for sale for taxes, letters and figures may be used, as they have heretofore been, to denote townships, ranges, sections, quarter sections, and parts thereof, and the years for which taxes are due. The auditor shall cause the transcript required by the third section of this act, to which this is a supplement, to be published once in some paper printed in the state, which publication shall be at least seventy-five days before the day of sale; and the printer shall be allowed eight cents, state paper, for each tract so advertised. It shall be the duty of the printer to deposit one copy of the said list with the auditor of public accounts; one copy with the treasurer of the state; and one copy with the secretary of state; and forward one copy to each of the clerks of the county commissioners' court in the respective counties; and it shall be the duty of these officers to file

His compensation.

Clerk neglecting to forward list, to be fined.

Sheriff not to sell land lying out of his county.

If there is no personal property, the auditor may sell land.

Sheriff failing to pay over money.

Treasurer shall give information thereof.

Proceedings against the sheriff.

How the treasurer may revalue property.

Letters and figures may be used in describing land. Land shall be advertised for sale.

Allowance to the printer.

Shall deposit a copy of adv. with auditor.

treas. and sec. of state and forward copy to clk. com. courts. Which shall be filed. Auditor's deed evidence of regularity of sale. Formal exceptions to deed shall be overruled. Sale of lands and town lot en. be sheriff. They may be redeemed. Deed for same how made. Effect thereof. Notice of sale. Sheriff's deed evidence of regularity of sale.

and preserve the copies so furnished, in their respective offices, as records thereof; and copies, taken from them, shall be evidence in any court of justice within this state. It shall not be necessary for any purchaser of lands, so sold for taxes, to obtain, keep, or produce any advertisement of the sale thereof, but his deed from the auditor of public accounts shall be evidence of the regularity and legality of the sale, until the contrary shall be made appear: *Provided, however,* that no exceptions shall be taken to any such deed, but such as shall apply to the real merits of the case, and are consistent with a liberal and fair interpretation of the intentions of the legislature.

SEC. 11. The sales of lands, or town lots, hereafter sold by the sheriff for taxes, are hereby declared to be good and valid, and he is required to give a certificate and keep a list of the same; and if not redeemed within two years, by paying double the amount of such sale to the sheriff or purchaser, to make and execute a deed, and acknowledge the same before the clerk of the circuit court, for such lot, or lots, and which deed shall vest the fee simple in such lot or lots, in the purchaser and his heirs: *Provided,* the sheriff shall give thirty days' notice of the time and place of such sale, by putting up written or printed advertisements, in three of the most public places in the county, describing therein the lot or lots to be sold. The sheriff's deed shall be evidence of the duties required of him having been performed, until the contrary shall be proved: to acknowledge a deed for the same as in other cases of sale by him.

Duplicate deeds. On proper notice. And affidavit.

SEC. 12. The auditor of public accounts may issue a duplicate deed of any tract of land which may have been sold for taxes, whenever the original deed of such tract has been lost or mislaid. Notice of application for such duplicate shall be published in the newspaper printed at the seat of government, for three successive weeks, at least three weeks preceding such application: and the owner of any lost deed so applying, shall file an affidavit, setting forth that said deed has been lost or mislaid, and has not been transferred or conveyed by him.

Tax on ferries to improve roads

SEC. 13. The county commissioners' courts in each and every county, shall have power to levy and collect an annual tax on each ferry within their respective counties, according to the value or annual income of said ferry; and all moneys so collected, shall be laid out under the direction of said commissioners for the opening and repairing the public roads leading to and from such ferry, and within ten miles of said ferry, from which such money may have been collected, and for no other purpose: *Provided,* they shall not collect from any one ferry, in one year, a sum to exceed three hundred dollars.

Laws repealed.

SEC. 14. That sections fourteen and twenty of the act to which this is a supplement, and so much of said act as requires sheriffs to settle with the clerk on the first Monday of December, or allows the county treasurer till the 1st of August to take in lists of taxable property, and make his return to the clerk; and so much of the 17th section of said act as requires the sheriff to leave written notices in certain cases; and so much of the 3d section as requires the lists of lands of non-residents, delinquents, to be published three

weeks successively; and so much of the same section as allows the printer ten cents a tract for publishing said lists, are hereby repealed.

APPROVED, January 19, 1829.

AN ACT to amend the several Revenue Laws of this state.

In force Feb. 12, 1831.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the several clerks of the county commissioners' courts within this state, upon receiving the list of lands advertised for sale by the auditor, shall immediately thereupon examine said list; and upon examination, should he find any of the residents' lands therein advertised for sale, he shall make out a list of such resident lands so advertised, and immediately transmit the same to the auditor, who, upon receiving the list from the clerk any time previous to the sale of lands so advertised, shall strike such tract or tracts from his list, and in no case be authorized to sell the same.

County clk. to examine auditor's list of lands advertised.

SEC. 2. So much of the act to which this is an amendment, approved February 10, 1827, as authorized a class of third rate land for taxation, is hereby repealed; and hereafter the public printer shall be allowed six cents for each tract advertised for sale.

Third rate of land abolished. Printer's allowance fixed.

SEC. 3. In all cases in which non-residents have failed, or shall hereafter fail, to list their lands for taxation, according to law, the auditor shall list them from the best information he can obtain, and his so listing them shall be as good and valid, in all respects whatever, as if they had been listed by the owner; and in whose name soever any lands may be listed for taxation, or sold for taxes, the sale shall be as good and valid, in all respects whatever, as if such land or lands had been listed for taxation, and sold for taxes, in the name of the patentee, or of the actual owner, any thing in any law to the contrary notwithstanding.

If land owners fail to list their lands, auditor shall list them.

Lands sold by state subject to taxation from time of sale.

SEC. 4. All lands sold by the state, or by any county or township, whether the same be canal, seminary, school, saline, or other lands, are hereby declared subject to taxation, from the date of the sale; and it shall be the duty of the auditor of public accounts, on or before the 1st day of April next, to transmit, by mail or otherwise, to the clerk of the county commissioners' court of any county in which any canal, seminary, saline, or other lands sold by the state are situated, a correct list of the lands so sold lying in such county, with the name of the purchaser of each tract; and on or before the 1st day of April, annually, said auditor shall transmit, as aforesaid, a list of all such lands, so sold, of which he shall not have previously furnished a list, as aforesaid.

Auditor to furnish county clerks with lists of lands sold by state.

SEC. 5. County orders, hereafter issued, shall not be deemed to bear interest, unless interest is expressly mentioned on the

County orders not to bear interest.

face of the order, or unless the county commissioners' court shall, by a general order, ordain that such county order shall bear interest.

APPROVED, Feb. 12, 1831.

In force
Feb. 27,
1833.

AN ACT concerning the Public Revenue.

Delinquent list to be furnished to co. commissioners' courts.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the auditor of public accounts shall, immediately after the 1st day of September, annually, make out and transmit to the several clerks of the county commissioners' courts, a delinquent list of all lands owned by non-residents situate in the counties of the said clerks, and of all other lands listed with him for taxation, on which any taxes and interest shall be due and unpaid, stating the year or years for which taxes are due, and the whole amount of taxes and interest, the name of the patentee or patentees, and the name of the present owner, if known; and shall prefix thereto his certificate, certifying that the said list contains a true and correct list of all lands upon which taxes are due and unpaid, situate in said county, as aforesaid; which list and certificate shall be filed and preserved in the office of the several clerks of the county commissioners' courts respectively; and all taxes which shall not be paid into the state treasury by the said 1st day of September in each year, shall be paid in the counties where the land lies.

Clerks of said courts to make duplicates of the same.

SEC. 2. The clerk of the county commissioners' court aforesaid shall make out, on or before the 1st day of November, annually, a duplicate transcript of the list furnished him by the auditor, as aforesaid, of all lands lying in his county, adding thereto the amount of costs for advertising and selling the same, and shall prefix thereto a notice, that the lands contained in said transcript had been returned by the auditor, as aforesaid, and that the same will be sold for the taxes, interest, and costs due and unpaid thereon, stating also the time and place of such sale. The said transcript and notice shall be published in some newspaper in this state, at least sixty days previous to such sale.

Compensation for services performed under this act.

SEC. 3. The clerk of the county commissioners' court shall be allowed ten cents on each tract of land advertised by him, as aforesaid, and the sheriff shall be allowed five cents on each tract, for selling the same, to be added to the taxes due thereon, and may retain the same out of the proceeds of such sales; the like amount shall be allowed out of the state treasury in all cases where the state becomes the purchaser thereof; and the printer or printers of such transcript and notice, shall be allowed the sum of six cents for each tract advertised, which shall be also charged on each tract in addition to the tax aforesaid, which shall be paid into the state treasury by the said clerk, for the use of such printer or printers; and as soon as such publication shall be made, and the several copies deposited as required by this act, the printer or printers

thereof shall receive in advance, on the warrant of the auditor, out of the state treasury, the whole amount the said printer or printers may be entitled to for such publication.

SEC. 4. The printer or printers of the transcripts and notices aforesaid, are hereby required, immediately after the same shall have been published, to deposit three copies with the auditor of public accounts, three copies with the state treasurer, three copies with the secretary of state, and shall transmit by mail or otherwise, three copies thereof to the clerks of the county commissioners' courts of the several counties respectively, in which such lands are situated, (one of which shall be filed in the office of said clerk, one shall be placed in a conspicuous place in said office, subject to the inspection of all persons whatsoever, and one copy shall be delivered by said clerk to the sheriff of said county,) and one copy each to the clerks of the county commissioners' courts of the other counties of this state respectively. The said printer or printers shall prefix a certificate to each of said copies, with the signature or signatures of such printer or printers, stating that such transcript and notice was duly published, the time, place, and name of the newspaper in which the same was published, and that the number of such transcripts and notices so published correspond with the number of newspapers printed for that week, and that the same were inclosed with and distributed in single numbers with each newspaper respectively; and certified copies of such transcripts, as aforesaid, shall be *prima facie* evidence of the facts they contain, in all courts of justice in this state.

SEC. 5. On the first Monday in March, annually, the clerks of the county commissioners' courts, assisted by the sheriffs of the several counties respectively, shall proceed to sell, at the door of the court house, (or at some other public place at the seat of justice, if there be no court house,) all lands at any time advertised by the clerk, as aforesaid, on which the taxes and costs are due and unpaid, or so much thereof as will bring the taxes, interest, and costs due thereon; and shall continue the same from day to day, (Sundays excepted,) until the same shall be completed. If any tract, when exposed to sale, as aforesaid, will not bring the amount of taxes, interests, and costs due thereon, the same shall be stricken off to the state, which shall be considered the purchaser thereof.

SEC. 6. It shall be the duty of the sheriffs of the several counties to attend regularly all sales made by the clerk, as aforesaid, and to assist the said clerk in the execution of the same; and the said clerk shall keep a register of such sales in a book to be provided by him for that purpose, in which he shall enter each tract of land exposed to sale by the sheriff as particularly as the same is described in the advertisement made by him, as aforesaid, stating the precise quantity of each tract sold, to whom sold, and the amount of the proceeds of such sale, leaving at the end of each line three columns in blank of a sufficient space to insert the names of persons who may redeem such lands, the date of the redemption, and the amount of the redemption money; he shall receive the whole amount of the proceeds of such sales, and give receipts to the purchasers for the same, and shall give certificates of purchase, and

execute deeds of conveyance to all persons who may become the purchaser or purchasers of any tract or tracts, or parts of tracts, at any such sale aforesaid; which deed shall be as near as practicable after the form as is now required to be given by the auditor in similar cases, and shall prefix thereto the seal of the court. If the sheriff should refuse or fail to attend the sale, as aforesaid, the clerk may employ another person, who shall be entitled to the fees for the same.

Transcript of sales to be transmitted to auditor.
 SEC. 7. The clerk of the county commissioners' court of each county shall, immediately after the sale of land for taxes, on the first Monday in March, annually, make out and transmit to the auditor of public accounts, by the first Monday of April, a transcript from his book, of all such sales, and the amount of the same, particularly describing each tract, of which the state becomes the purchaser, and the amount of such sales, so sold to the state as aforesaid, prefixing thereto his certificate, that the same contains a true and correct transcript of all lands sold at the said sale, and shall at the same time pay into the state treasury the whole amount of the proceeds of such sales, with the exception of the charges for advertising and selling.

Deeds.
 SEC. 8. All deeds made and executed by the clerk of the county commissioners' courts, as aforesaid, where the pre-requisites of this act have been complied with, shall vest a perfect title in fee simple to the purchaser, unless the lands therein contained shall be redeemed according to law, or the former owner shall show that the taxes for which the same shall have been sold, had been previously paid as required by law; or that the land was not legally subject to taxation: *Provided*, That in all such cases, the deed made and executed by the clerk, as aforesaid, shall be *prima facie* evidence of title, and of the legality of such sale, until the contrary shall be made to appear.

Land returned by mistake.
 SEC. 9. Whenever it shall appear to the satisfaction of said clerk, that any lands have been returned by the auditor through mistake, upon which taxes have been paid by residents of said county, he shall correct the same upon the transcript furnished him by the auditor as aforesaid, and shall insert the same on the transcript of sales furnished by him to the auditor, as aforesaid, to enable the said auditor to correct the same on his books.

Redemption.
 SEC. 10. Any lands which may be sold at any time, as aforesaid, for taxes, interest, and costs due thereon, and unpaid, may be redeemed at any time within two years from the date of such sale, by paying to the clerk of the county commissioners' court of the proper county, for the use of the purchaser or purchasers, double the amount of the taxes, interest, and costs for which the same may have been sold. Lands that may belong, at the time of such sale, in the whole or in part, to heirs under lawful age, may be redeemed at any time before the expiration of one year from the time the youngest of said heirs shall become of full and lawful age; but no person shall be permitted to redeem any lands sold for taxes, interest, and costs, as aforesaid, unless he shall at the same time pay to said clerk, all taxes which may have become due subsequent to each sale, together with interest thereon, at the rate of six per centum per annum, from the time they become due;

and if any purchaser of lands sold for taxes shall suffer the same to be sold before the expiration of two years allowed for the redemption of the same, the persons whose lands (shall) have been thus sold may redeem the same from both sales, by paying to the said clerk, for the use of the first purchaser, the tax and costs of the first sale, and for the use of the second purchaser, double the amount of the taxes, interest, and costs for which the same may have been sold at such second sale.

SEC. 11. When any person or persons shall apply to the clerk as aforesaid, to redeem any lands sold for taxes under the provisions of this act, relative to minor heirs, it shall be incumbent on the person or persons so applying, to produce to said clerk a certificate of the judge, clerk, or other proper officer of the proper court having jurisdiction of wills and testaments, and intestate estates, that it appears from the records of said court, that such person or persons are the legal heir or heirs of the former owner of the said tract or tracts of land, and that such former owner died before the said tract of land was sold for taxes, and also certifying the true age of the youngest of such heirs; and in cases where there has been no will, nor any settlement of such intestate estate before the court to which such jurisdiction appertains, such heir or heirs shall go before some court of record and exhibit proof of his, her, or their heirship, minority, and age; and on producing the certificate of the clerk of such court to the above facts, such heir or heirs shall be entitled to all the rights of redemption, as are herein before allowed: also, such certificate of heirship shall bear the signature of the clerk of the proper court, the sufficiency of whose authentication shall be certified by the judge of such court; and in all cases where such certificate shall be made without this state, the official character of such judge shall be certified by the secretary of state or territory in which such proof shall be exhibited, with the seal of the state or territory thereto affixed, and the certificate containing the evidence on which the right to redeem is predicated, shall in every case be delivered to the said clerk, and by him filed and preserved in his office.

SEC. 12. The clerk of the county commissioners' court shall, in every instance, before he enters upon the duties required of him by this act, in relation to the revenue, as aforesaid, enter into bond, (in addition to the bond to be given by him for the performance of his ordinary duties,) in open court, before the county commissioners' court, at their June or September term, and ever after at their June and September term biennially, in the penalty of not less than one, nor more than five thousand dollars, payable to the people of the state of Illinois for the use of the state, and conditioned for the faithful performance of the duties required of him by this act; which bond shall be transmitted to the office of secretary of state, at the seat of government, by the said commissioners, by some safe mode of conveyance, with all convenient despatch; and certified copies thereof, under the seal of state, shall be admitted as evidence in all courts of record in this state; and suits may be commenced on said bond against the said clerk and his securities, from time to time, by the auditor, for the use of the state, for

any breach thereof, at any time, until the whole penalty, if necessary, shall be recovered.

Failing to pay moneys into the state treasury.

SEC. 13. If any clerk shall fail at any time to pay into the state treasury the moneys collected by him under the provisions of this act, and at the time required by this act, he shall forfeit and pay, for the use of the state, one per cent. per week upon the whole amount remaining so unpaid; which may be recovered, together with the amount collected upon the sales, as aforesaid, by said clerk, by suits to be commenced on their official bonds, for the use of the state, in any court in this state having jurisdiction of the same.

Shall for such failure be removed from office.

SEC. 14. It shall be the duty of the court rendering judgment against any such delinquent clerk, as aforesaid, to cause the county commissioners' court to be notified of such delinquency and judgment, whose duty it shall be, at their next term thereafter, to remove such clerk from his office; and the clerk so removed, shall be ineligible to hold any civil office of trust, profit, or emolument in this state, for the term of four years from and after the date of such removal: *Provided*, That in all cases where an appeal or writ of error may be prosecuted from the judgment to be rendered against any such delinquent clerk as aforesaid, the order for his removal shall not be made until the final judgment of the superior court thereon shall be given, and notified to the county commissioners' court, as aforesaid.

Taxes paid, or advertised same previous to sale.

SEC. 15. If the taxes on any tract of land, advertised by the clerk, as aforesaid, shall be paid previous to such sale, the clerk shall charge his fees for advertising only; which compensation shall be added to the amount of taxes and other costs due on such tract, and paid by the owner, at the time of the payment of the taxes thereon, as aforesaid; and the said clerk shall moreover have the right to charge each purchaser, at any of the tax sales aforesaid, the sum of twenty-five cents for each deed made and executed to each person under the provisions of this act.

Lands heretofore sold and unredeemed.

SEC. 16. All lands heretofore sold and stricken down to the state, or to any county, or which may hereafter be so sold for the taxes and costs thereon, and which still remain unredeemed, may be redeemed by the owner at any time hereafter, on the person's paying into the state or county treasury, as the case may be, the whole amount of the tax and costs due up to the time of redeeming the same, with six per cent. interest per annum on the whole amount due.

Residents having lands in different counties?

SEC. 17. Residents of this state, owning lands in several and different counties, may list the same in the county in which they reside, and pay the taxes thereon in the same manner as now provided by law, any thing in this act to the contrary notwithstanding.

Acts repealed.

SEC. 18. The third, fourth, fifth, and twenty-seventh sections of an act, entitled "An act to provide for raising a revenue," approved February 19, 1827, and all other acts and parts of acts, as come within the purview of this act, be, and the same is hereby repealed.

APPROVED, Feb. 27, 1833.

AN ACT in addition to an act, supplemental to an act, entitled "An act to provide for raising a Revenue." *In force Feb. 12, 1835.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That whenever any person shall wish to list lands for taxation which are situated in any other county than the one in which he resides with the Treasurer of said county, it shall be the duty of said Treasurer to administer an oath to every such person, that the bona fide owner of said land resides in this state, and upon his refusing to take such oath, the Treasurer shall not permit such lands to be listed in the county. *Oath to be administered to person wishing to list lands lying in another county.*

APPROVED, Feb. 12, 1835.

AN ACT concerning the redemption of Lands sold for taxes. *In force Jan. 13, 1836.*

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That when any person shall be permitted to redeem any land sold for taxes, as heir or devisee, under the provisions of any law of this state allowing infants to redeem land sold for taxes, it shall be the duty of the clerk or auditor permitting such redemption, to make a copy of the evidence produced, and certify such copy, and file and preserve the same; and a certified copy of such copy shall be evidence of the existence of the original; and the person redeeming shall be permitted to retain the original evidence. *Infants redeeming land sold for taxes.*

APPROVED, Jan. 13, 1836.

AN ACT concerning the Public Revenue. *In force Jan. 15, 1836.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That so much of the several revenue laws of this state as require the state treasurer to pay the county commissioners of each of the counties of Pike, Adams, and Schuyler, for the use of said counties, any sum or sums of money, be repealed; and hereafter the sheriffs of those counties shall pay into their respective county treasuries the whole amount of the tax collected by them on lands lying within the said counties, at the same time, and in the same manner as is provided by law for all the counties in this state except the counties on the Military Bounty Tract. *Parts of revenue law repealed.*

APPROVED, January 15, 1836.

AN ACT concerning the payment of the Revenue, and for other purposes.

Bills received.

Governor, &c. to give notice prohibiting reception of said bills. When to be received.

When in force.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That hereafter the bills of the Bank of the State of Illinois and branches, shall be received in payment of the revenue of this state, and the different counties in the state; and in payment of college, school and seminary debts, and interest; Provided, That nothing herein contained, shall be construed so as to prohibit the receiving of other current money of this state, for the purposes aforesaid; Provided further, That if at any time hereafter, the governor, auditor and treasurer, shall be of opinion that there will be danger of loss, by receiving the bills of the State Bank, as aforesaid, they are hereby authorised and required, to cause a notice to be published in the newspaper printed by the public printer, and all other newspapers printed in the state, prohibiting the further reception of said bills, after a day named in such notice, for the uses and purposes aforesaid; and after the day named in such notice, the said bills shall not be received, until otherwise directed by law. And in case the governor, auditor and treasurer, shall give a notice as herein required, it shall be their duty to communicate the fact to both branches of the General Assembly, within ten days after the next meeting thereof, together with their reasons for giving such notice.*

SEC. 2. *This act to be in force from and after its passage. And it shall be the duty of the secretary of state, to cause this act to be published forthwith after its passage, in the newspaper printed by the public printer of this state.*

APPROVED, January 16, 1836.

In force Dec. 17th 1836.

State of Ill. consents to rec. upon deposit all sums of money wh. is or may become due her from the U. S. under the act of con., ap., 23d June, 1836, the faith of the State pledged to comply with the provisions in said act. Treasurer of State authorised to

AN ACT to provide for receiving a distributive share of the surplus revenue of the United States on deposit.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the State of Illinois does hereby consent, and agree to receive, upon deposit from the United States, all sums of money to which the State of Illinois is or may be entitled under and according to the provisions of an act of the Congress of the United States, entitled "an act to regulate the deposits of the public money," approved on the twenty-third day of June one thousand eight hundred and thirty-six. And the faith of the State is hereby irrevocably pledged to comply with and perform all the conditions and provisions contained in the said act, in relation to receiving and refunding the said money; and the treasurer of this State is authorised to receive from the United States the said sums of money, and to execute certificates of de-*

posit for the same, in such forms and with such conditions as is required by the act of Congress aforesaid.

SEC. 2. *This act shall be in force from its passage.*

APPROVED, Dec. 17, 1836.

receive the money from the U. S. and give certificate.

AN ACT concerning the surplus revenue.

In force March 4, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the money required to be deposited in the State Bank of Illinois, and Bank of Illinois at Shawneetown, under the provisions of the act passed at the present session, amending the several laws in relation to common schools, shall be, by the fund commissioners, paid upon the stock authorised to be subscribed to the State Bank of Illinois and Bank of Illinois at Shawneetown, so soon as said commissioners shall be notified that said banks or either of them shall have accepted the amendments proposed to their charters.*

APPROVED, March 4, 1837.

Money deposited.

Paid on stock subscribed for

AN ACT concerning the public revenue of the county of Warren.

In force March 2, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That so much of the several revenue laws of this State as requires the State treasurer to pay the county commissioners of Warren county for the use of said county, any sum or sums of money be, and the same is hereby repealed; and hereafter the sheriff of the county of Warren shall pay into the county treasury the amount of the tax collected by him on lands lying within the said county, at the same time, and in the same manner as is provided by law for all the counties in this State, except the counties on the military bounty tract.*

APPROVED, March 2, 1837.

Acts which require money to be paid to Warren county repealed. Duty of sheriff of Warren county.

AN ACT supplementary to "an act to amend an act to provide for raising a revenue."

In force Dec. 6, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the several sheriffs in this State shall, on the first Mondays of December and March, annually pay into the county treasuries all the taxes that may have been collected and taking the treasurer's receipt for the same; and*

Sheriffs to pay taxes into county treasuries.

Receipt to be filed.

a certified copy of receipt shall be filed by such sheriff, with the clerk of the county commissioners' court.

Sheriffs to make final settlement at June term.

SEC. 2. All sheriffs shall make a final settlement with the county commissioners court, at the June term of said court, in each year, by paying into the county treasury the whole amount of taxes due the county from any such sheriff, taking the treasurer's receipt for the same, and a copy of said receipt, with an account current, shall be filed with the clerk of the county commissioners' court, which receipt and account current shall be entered on the records of said court; any law to the contrary notwithstanding.

SEC. 3. The nineteenth section of the act to provide for raising a revenue, approved February 19th, 1827 be, and the same is hereby repealed.

This shall take effect from and after its passage.

This bill having been laid before the council of revision, and ten days not having intervened before the adjournment of the General Assembly, and the said bill not having been returned with the objections of the council on the first day of the present session of the General Assembly, the same has become a law.

Given under my hand, the 6th day of December, A. D. 1836.

A. P. FIELD, Secretary of State.

In force July, 22, 1837.

AN ACT relative to the duty of County Treasurers and Sheriffs.

Duty of county treasurer.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter it shall be the duty of the county treasurer, of any county in this state, whenever any county order is presented for payment, to endorse on the back of any such order, the time when the same was presented for payment; and it shall also be the duty of the said treasurer, to set down in a book to be kept by him for that purpose, the amount and date of all such county orders, to whom made payable, and the time when presented to the said treasurer for payment; and all county orders shall be paid according to their original dates; and it shall be the duty of the county treasurer, whenever any money comes to his hands, to set apart the amount of the order presented as aforesaid, which money shall be kept by the treasurer until called for; and the said treasurer, when he goes out of office, shall deliver said book, containing a list of the county orders so presented, to his successor, who shall in all things act as though the entries of orders were made by himself.

County orders to be paid according to dates.

Duty of sheriff.

SEC. 2. It shall hereafter be the duty of the sheriff of every county in this state, to make out and deliver to the treasurer of his county, on the first Mondays in January and March, June and September, in each year, an account of the amount of revenue collected by him for the past year, stating particularly the amount collected in cash, and the amount collected in county orders, which account shall be kept by the said treasurers, subject to the inspec-

tion of any voter of the county; and in case any treasurer or sheriff shall fail or refuse to comply with the provisions of this act, he shall be liable to a fine of fifty dollars, to be sued for in the name of the county commissioners' court, by any person or persons, by an action of debt, before any justice of the peace, or the circuit court of the county.

APPROVED, July 22, 1837.

AN ACT authorizing the Clerks of the County Commissioners' Courts to list certain Lands. *In force July 21, 1837.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases where the several clerks of the county commissioners' court of this state, shall come in possession of the fact, that there is land situated in the county in which he is acting as clerk, which land has not been transmitted to said clerk, by the Auditor of State, and which has been actually granted to any person or persons, and which has not been listed by any person, and that taxes are due and owing the state or county, which remains unpaid, said clerk shall proceed to list the same, in the name of the person or persons to whom said lands were granted; and shall proceed to advertise and sell the same for taxes, as other non-resident lands are now sold.

APPROVED, July 21, 1837.

AN ACT concerning the Public Revenue.

In force 21st July, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That so much of the several revenue laws of this state, as requires the state treasurer to pay the county commissioners of McDonough county, for the use of said county, any sum or sums of money, in lieu of her resident land tax, be and the same is hereby repealed; and hereafter the sheriff of said county be required to pay to the county treasurer of the aforesaid county, the amount of tax collected by him, on lands lying in said county, at the same time and in the same manner as sheriffs are in the several counties in this state, other than those on the military tract.

Law repealed.

Duty of sheriffs.

SEC. 2. The provisions of the first section of this act shall extend to the county of Peoria; and the sheriff of the said county of Peoria is hereby required to pay over the resident land tax of said county, in the manner therein provided, any law to the contrary notwithstanding.

Duty of Sheriff of Peoria co'y

This act to be in force from and after its passage.

APPROVED, 21st July, 1837.

RIGHT OF WAY.

*In force
May 2,
1833.*

AN ACT concerning the Right of Way, and for other purposes.

*When any
owner of
land
shall object
to a public
road pass-
ing thro'.
the same,
the superin-
tendent of
such road
how to pro-
ceed.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases where a public road, canal, or other public work shall have been heretofore authorized, or which shall hereafter be authorized by law, to be laid out or constructed in this state, either by the authority of the United States or this state, and the same is required to pass over the land belonging to any company, corporation, or individual, and the owner or owners shall object thereto, and cannot agree with the commissioner, superintendent, or other person or persons authorized to lay or construct the same, on the amount of damages which such owner or owners may claim, it shall be lawful for such commissioner, superintendent, or other authorized person or persons to apply to some justice of the peace of the county where the same may occur, who shall cause three householders to appear before him, and the householders so summoned, after being sworn faithfully and impartially to examine the ground which shall be pointed out to them by the commissioner, superintendent, or other authorized person or persons, shall assess the damages which they shall believe such owner or owners will sustain over and above the additional value which such land will derive from the construction of such road, canal, or other public work, and make two written reports, signed by at least a majority of them, one of which they shall deliver to the commissioner, superintendent, or other persons requesting the view, and the other to the justice of the peace; after which, it shall be lawful for the road, canal, or other public work, to pass over the land of such company, corporation, individual, or persons, doing as little damage as the nature of the case will permit: *Provided,* That the amount of the damages so assessed, and the costs of the view be first paid, either to the claimant or claimants, or to the justice of the peace, to whom the application and return shall have been made.

*When
damages
are to be
paid out
of the state
treasury.*

SEC. 2. If the damages assessed are authorized by law to be paid out of the treasury, it shall be the duty of the commissioner, superintendent, or other authorized person or persons having charge of such work, to transmit to the auditor of public accounts a copy of the assessment made by the householders, together with a statement of the costs of the view, and it shall be the duty of the auditor to issue his warrant upon the treasury for the payment of the amount. And if the damages are authorized to be paid out of the county treasury, the person or persons, having charge of such work, shall transmit to the county commissioners' court, a copy of the assessment made by the householders, with a statement of the costs of the view, and if approved by the court, they shall order the same to be paid out of the county treasury: *Provided, however,* In all cases arising under the provisions of this act, the costs of the view of the householders shall be paid by the applicant requesting the same: *Provided, also,* That nothing in this act, or in the several acts relating to state roads, shall be so construed as to authorize

*When out
of county
treasury.*

the payment of any such damages out of the state treasury; and in no case shall any money be paid out of the state treasury for any damages, as aforesaid, without a special provision of law for such purpose.

SEC. 3. Whenever it shall be deemed necessary for the construction of any road, canal, or other public work, to procure from the land of any company, corporation, or individual, timber, stone, or sand, and such company, corporation, or individual shall object thereto, and in case the person authorized to construct such work, shall not agree with the owner of the land, on the price, it shall be lawful for such person authorized to construct such work to apply to a justice of the peace of the county, who shall cause three householders of the neighborhood to be summoned and sworn, as provided in the first section of this act; and it shall be the duty of the three householders to go on the ground and assess the damages which they shall believe the owner will sustain, and make two written reports thereof, signed by at least a majority of them, stating the quantity and description of the articles and value thereof, and give one copy thereof to the applicant for the view, and the other they shall return to the justice of the peace; after which assessment and report and payment of the amount to the claimant or justice, with the costs of view, it shall be lawful to take the materials so required from the land of the owner, doing as little damage as possible to the owner of the land.

*When owner
of land
shall object
to the pro-
curing
therefrom
materials
necessary
for the con-
struction of
any road.*

SEC. 4. In all cases arising under the provisions of this act, if the householders shall report it to be their opinion that no damages would be sustained by the owner of the land for the passage of any such road, canal, or other public work, over and above the advantages which such land would derive from its construction, nothing more shall be paid than the costs of the view; and in all cases arising under this act, either party may appeal to the circuit court of the county, within the same time, and under the same rules and regulations, as are, or shall be prescribed by law for taking appeals from the judgments of justices of the peace, and the circuit court shall proceed upon such appeal, as in other cases of appeals from the judgment of justices of the peace, and render such judgment therein as shall be consistent with law and justice.

*If no dam-
ages be sus-
tained.*

Appeals.

SEC. 5. Any person who shall remove or pull down any part of any fence, barricade, or wooden structure, placed across any public road, or other public work for the purpose of preventing travel thereon, whilst the same shall be constructing or undergoing repairs under the authority of this state, or of the United States, and thereby the grading, embanking, paving, or other work shall be injured or subjected thereto, shall pay to the undertaker of the work five dollars for each offence, recoverable with costs, before any justice of the peace of the county: *Provided, however,* That no such penalty shall be recoverable unless it shall be made to appear that the undertaker of the work shall have caused a written or printed notice to all persons, to be affixed in a conspicuous place at such fence, barricade, or wooden structure, forbidding the same to be removed or pulled down, or travel on the grading, paving, embankment, or other work: *Provided, also,* That if the said works

*Persons
pulling
down any
fence across
Public road
while the
same is con-
structing.*

be on any road where the United States' mail shall at the time be carried, that the aforesaid penalty shall not be recoverable against the carrier, should he deem it necessary to expedite him in the passage of the mail.

Act repealed.

SEC. 6. The act passed at the last session of the general assembly, entitled "An act concerning the right of way, and for other purposes," which was laid before the council of revision, and not being approved by them, became a law under the constitution, because it was not returned on the first day of the present session, is hereby wholly repealed; also the eighth section of the act passed at the last session of the general assembly, entitled "An act to amend an act, entitled 'An act concerning public roads,'" approved Feb. 12, 1827, is hereby repealed.

This act is to be a public act, and shall take effect from and after the first day of May next.

APPROVED, Feb. 28, 1833.

RIGHT OF PROPERTY.

In force June 1, 1827.

AN ACT prescribing the mode of trying the Right of Property.

Trial of right of property.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That whenever an execution or writ of attachment shall be levied by any sheriff or coroner upon any personal property, and such property shall be claimed by any person or persons, other than the defendant in such execution or attachment, by giving to the sheriff or coroner notice, in writing, of his, her, or their claim and intention to prosecute the same, it shall be the duty of such sheriff or coroner, forthwith to summon a jury of twelve respectable householders of the county, to meet at a place to be designated by him, before the day appointed for the sale of such property; and then and there proceed to inquire, by the oath of said jury, whether the right of such property be in such claimant or not.

Jury.

Notice to pl'ff in execution.

SEC. 2. It shall be the duty of such sheriff or coroner to notify the plaintiff in the execution or attachment of such claim, and the time and place of trial; and on the day appointed, the sheriff or coroner shall swear the jury, and such witnesses as may be produced, by either party, or may postpone the trial such reasonable time, on the application of either party, as he shall think proper, for the purpose of procuring testimony.

Mode of proceeding

SEC. 3. After the jury shall have agreed on their verdict, the sheriff or coroner shall reduce the same to writing, and it shall be signed by all the jurors, and the sheriff or coroner shall thereupon restore the property, if found to belong to the person or persons claiming, or shall proceed on such execution or attachment, if the property shall not be found to be in the claimant, in the same manner as if no claim had been made.

See act of 1835, following.

Costs.

SEC. 4. The sheriff or coroner shall make up a bill of all the

costs accruing on such trial, according to the provisions of the act or acts regulating the fees of officers, for similar services, and annex the same to the verdict of the jury; and shall have power to collect the same from the claimant of such property, if the verdict be against him, or from the plaintiff or plaintiffs in the execution, if such verdict be for the claimant, in the same manner that bills of fees in other cases are authorized by law to be collected.

SEC. 5. In case either party shall think himself or herself aggrieved by the verdict of the jury, he or she may appeal to the circuit court, in which case the party appealing shall give bond, with sufficient security, to prosecute such appeal without delay, and to pay all costs that have accrued or may accrue on such appeal, if judgment be given against him, in the circuit court; which bond shall be in a sum sufficient to cover all costs, and be payable to the opposite party; and the sheriff or coroner shall thereupon deliver to the clerk of the circuit court, the bond aforesaid, and all the papers relating to such trial, and the clerk shall enter said appeal on his docket, and the court shall proceed to try the right to such property, in the same manner as is before directed in this act: and in all such cases, judgment shall be given against the party failing, for all costs, and the clerk shall issue execution for the same.

Appeal.

Judgment on appeal.

SEC. 6. In all cases where any personal property shall be taken by virtue of an execution or attachment, issued by any justice of the peace, and be claimed as aforesaid, the same proceedings shall be had before the constable serving such execution or attachment, together with the justice who issued the process; and in such cases the justice shall administer the oaths to the jury and witnesses, and retain the papers relating to the proceedings, and in case of an appeal shall take the bond and transmit the same, with the other papers, to the clerk as aforesaid.

Trial before Justice of the peace.

SEC. 7. The verdict of the jury in all cases under this act, shall be a complete indemnity to the sheriff or other officer, in proceeding to sell, or restore any such property according to the verdict; and in case of an appeal, the sheriff or other officer shall retain such property, unless the party claiming, or the defendant in the execution, shall enter into a bond with sufficient security, for the delivery of such property to the sheriff or other officer, if the judgment of the court shall be against the claimant.

Verdict of jury and indemnity to sheriff.

SEC. 8. The act entitled "An act prescribing the mode of trying the right of property in certain cases," approved, February 12, 1821; the act entitled, "An act prescribing the mode of trying the right of property in certain cases," approved, February 7, 1823; and the act entitled, "An act to amend an act prescribing the mode of trying the right of property in certain cases," approved, February 7, 1823, approved, January 10, 1825, are hereby repealed. No rights which have accrued under the acts hereby repealed, shall be impaired by this act. This act to take effect on the first day of June next.

Acts repealed.

APPROVED, January 29, 1827.

In force
Jan. 30,
1835.

AN ACT to amend "An act regulating the mode of trying the Right of Property."

Duty of constable receiving an execution from a foreign county.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases when an execution shall be issued by any justice of the peace in this State, directed to any constable of a different county, it shall be the duty of such constable receiving the same, to proceed, as in other cases, to make a levy on the personal property of the defendant in such execution.

Further duty of constable.

SEC. 2. *Be it further enacted,* That it shall be the duty of any constable having an execution as aforesaid, after making a levy on the property of the defendant, and such property being claimed by another person or persons, to notify such person or persons that he will attend before some justice of the peace of the county, naming him, on some day to be designated (by him the said constable,) for the purpose of having the rights of said property tried, said constable designating the day and hour when such trial of the right of property shall take place: *Provided,* That said trial shall not be deferred exceeding ten days from the time such levy may have been made.

Duty of justice when property is claimed.

SEC. 3. That it shall be the duty of any justice of the peace, when notified of any person or persons claiming property as aforesaid, to enter such case on his docket, and to proceed in all cases, to have the right of such property tried as if the execution had been issued by him; and in case the property may appear to belong to the claimant, the justice shall enter judgment against the plaintiff in execution for the costs that may have accrued on such case, and on failure of the plaintiff to pay the same, the justice may issue execution, directed to any constable of the county in which such plaintiff lives, for the amount of such cost not paid; but in all cases, when it may appear that the property claimed belongs to the defendant in execution, it shall be the duty of the justice of the peace to enter judgment against the claimant of the property for the amount of such costs as have accrued, and execution may issue therefor as in other cases; *Provided,* That in no case of the trial of the right of property under this act, or the act to which this is an amendment, shall the defendant in execution be a competent witness, and that all appeals from the judgments on the trial of the right of property, shall be demanded on the day of such trial, and bond entered into before the clerk of the circuit court within five days from such trial; and in all cases of the trial of the right of property before a justice of the peace, either party may take the case into the circuit court by writ of certiorari, as provided in the "Act concerning justices of the peace and constables," approved, February 3, 1827: *Provided,* That in all cases of said appeals, the praying thereof shall be supersedeas, and stay all further proceedings until the expiration of five days.

Proviso.

Plaintiff residing in different county.

SEC. 4. *Be it further enacted,* That in all cases when the plaintiff in the execution neither resides in the county where judgment was rendered, nor in the county in which such trial of the right of property is had, it shall not be necessary for the constable

to give said plaintiffs notice; but the trial shall be conducted in the same manner as if actual notice had been given, and in case the property shall be found to be the property of the claimant, the plaintiff in the execution shall be bound for all costs that may have accrued.

APPROVED, Jan. 30, 1835.

ROADS.

AN ACT concerning Public Roads.

In force
March 1,
1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all roads within this state, which have been laid out in pursuance of any law of this state, or of the late territory of Illinois, and which have not been vacated in pursuance of law, are hereby declared to be public highways.

Roads heretofore laid out declared public highways.

SEC. 2. The county commissioners' courts of the several counties, shall have and are hereby vested with general superintendency over the public roads within their respective counties.

Power of county com'rs.

SEC. 3. The county commissioners of each county shall, at their March term, or so soon thereafter as may be, in each and every year, lay out and divide their respective counties into such road districts as they shall deem convenient and proper, defining accurately the boundaries of said districts, and all the roads therein; and they shall appoint one supervisor in each district, who shall serve one year, and until his successor be appointed.

Shall establish road districts and appoint supervisors.

SEC. 4. It shall be the duty of the clerk of the county commissioners' court in each county, to make out and deliver to the sheriff written notices to all the persons who have been appointed supervisors as aforesaid, within ten days after such appointments shall have been made, informing such persons of their said appointment, and describing the bounds of their respective districts; and the said sheriffs shall immediately deliver the said notices to the persons to whom they shall be directed, respectively; and if any person to whom such notice shall be so delivered, shall refuse to accept the office of supervisor, the sheriff shall return the said written notice to the county clerk, noting such refusal on the back thereof. But if the person to whom such notice of appointment shall be so delivered, shall agree to accept the same, then the sheriff shall notify the said clerk of such acceptance; and the said sheriff shall, in all cases, make the aforesaid returns of acceptance or refusal within twenty days after the delivery to him of such notices by the clerk. For any failure on the part of the clerk to make out and deliver to the sheriff any of the notices required by this section, the clerk shall be fined in the sum of ten dollars; and the sheriff shall incur the same penalty for any failure to deliver any

Who shall be notified of their appointment.

Refusal to accept.

one of said notices in the manner and within the period herein prescribed.

Penalty therefor.

SEC. 5. When any person shall refuse to accept the appointment of supervisor, he shall be fined five dollars, to be appropriated to road purposes: and when any supervisor shall die or be removed, the county commissioners shall appoint another supervisor for that district, at their next regular or special meeting.

Duty of supervisor.

SEC. 6. It shall be the duty of each supervisor to cause all the public roads within his district to be kept well cleared, smooth, and in good repair, causing all stumps to be cut low, so as to afford at all times a free and safe passage to wagons and other carriages along such road; to cause bridges and causeways to be made whenever the same shall be necessary, and to keep the same in repair; and to cause to be erected and kept in repair at the fork or crossing place of every public road, a post with plain inscriptions thereon, in large letters and figures, giving the direction and distance to the most noted place to which such road may lead.

Their exemptions.

SEC. 7. In consideration of the duties required of supervisors, they shall be exempted, during their continuance in office, from militia duty, and from serving as grand or petit jurors; but they shall receive no other compensation: *Provided*, The said supervisor may direct any person liable to work on the roads within his district to warn all, or any part of the hands in his said district; and the time any such person may be thus employed, shall be computed as part of the time that such person was liable to work on roads.

May depute persons to warn hands.

Obstructions to be removed, how.

SEC. 9. When any public road shall be obstructed by fallen timber, or in any other manner, and when any bridge or causeway shall be destroyed, or become impassable or dangerous to travelers, it shall be the duty of the supervisor to cause such obstruction to be removed, and to have such bridge or causeway rebuilt or repaired, as the case may require; and for that purpose he shall call out the persons bound to labor on the roads in his district, or as many of them as may be necessary: but if the persons bound to perform such labor in his district shall have previously performed their five days' labor, or if the labor due from such persons shall not be sufficient, he shall then proceed to hire as many laborers or teams as may be necessary to remove such obstruction or repair such damage: *Provided*, The cost shall not exceed ten dollars: and if the cost of such work shall be estimated by said supervisor to exceed ten dollars, then he shall report such obstruction or damage to any two or more of the county commissioners, whose duty it shall be, immediately, to cause such obstruction to be removed, or such bridge or causeway to be rebuilt or repaired, as the case may be, either by ordering the supervisor to hire laborers and teams for that purpose, or by making a contract with some fit person or persons, as they may deem best; and all moneys required to carry any of the provisions of this section into effect, shall be paid out of the county treasury.

Forfeiture for ob-

SEC. 10. If any person shall obstruct any public road by falling a tree or trees across the same, by encroaching upon, or fencing up

the same, or by placing any other obstruction therein, he shall forfeit for every such offence the sum of ten dollars; and the sum of three dollars for every day he shall suffer such obstruction to remain after he shall have been ordered to remove the same by any supervisor, county commissioner, or justice of the peace. And if any person shall purposely destroy or injure any bridge or causeway, or remove any of the timber or planks thereof, or destroy or deface any guide board, or guide posts on a public road, or dig any drain or ditch across a public road, such person, so offending, shall be liable to be indicted, and on conviction shall be fined in any sum not less than five dollars, nor more than one hundred dollars: *Provided, however*, that this section shall not be construed to extend to any person who shall lawfully cut down any timber for rails, firewood, or other purpose, and who shall immediately remove the same out of the road, nor to any person through whose land a road shall run who shall dig a ditch or drain across said road, if such person shall immediately build a bridge across such ditch or drain, and keep the same in good repair.

SEC. 12. The county commissioners are hereby authorized to cause new public roads to be located and made within their respective counties, and to alter or vacate public roads within their counties, except state roads. All roads when ordered to be opened, shall not be less than thirty, nor more than fifty feet wide; but bridges need not exceed sixteen feet in width.

SEC. 13. No new road shall be opened by order of the county commissioners' court, unless the same shall be applied for, by at least thirty-five voters, except in counties which shall not have more than three hundred voters, where only fifteen shall be required; such applicants shall deposit in the hands of the clerk of the county commissioners' court, a sufficient sum of money to pay the viewers. If their report be in favor of establishing the road, the money so deposited shall be returned to the persons who deposited the same; but if the report be unfavorable, the expense of the view shall be paid out of the money so deposited. And every person applying for such new road shall contribute one day's labor, in addition to the five days required by this act towards making such road. The clerk of the county commissioners' court shall furnish each of the supervisors through whose road districts such new road shall pass, with a list of the persons who petitioned for the same; and any such petitioner who shall not reside within some district through which such new road shall pass, shall be required to perform the day's labor herein required of him, under the direction of the supervisor of the nearest road district, and for failing to do so, after being duly notified, he shall be fined as provided in the eighth section of this act.

SEC. 14. When a new road shall be applied for, as aforesaid, the county commissioners' court shall appoint three suitable persons to view the ground proposed for the same; and if, after such view, the viewers shall believe the road applied for to be necessary, they shall proceed to locate the same upon the nearest and best route, designating its course through prairies and improved land, by fixing stakes in the ground; and through timbered land, by marking the trees, and make report thereof to the next county

commissioners' court ; but if after the view, they shall deem such road unnecessary or improper to be made, they shall report their opinion to that effect at the next term of the said court.

Useless roads how vacated.

SEC. 15. Whenever it shall be represented to the county commissioners' court by the petition of thirty-five voters, that a public road, established by the said court, or any part thereof is useless or burthensome, and ought to be vacated, the said court, upon a sufficient sum of money being deposited with the clerk to pay the expense of a review, (such money to be returned, if the road shall be declared useless,) shall appoint three suitable persons to view the same, who shall report to the said court, at the next term after such appointment, whether such road be in their opinion useless or burthensome, together with the reasons for such opinion ; and the county commissioners may then order such road to be vacated, if in their discretion they shall deem such order proper : *Provided*, that no petition praying for the establishment or vacation of a public road, shall be received by the said court, unless the said petitioners, or some of them, shall have given at least twenty days' public notice of such application, by a written advertisement posted on the outside of the door, of either the court house or county clerk's office of the proper county.

Supervisor to be notified of new roads.

SEC. 16. When a new road shall be located, the county commissioners shall immediately cause the supervisor of each district through which such road shall pass, to be notified of such location ; and it shall be the duty of the said supervisors to make such roads within their respective districts, and to keep the same in repair, so far as the labor of the persons bound to work on said road shall enable him ; and if such labor be insufficient, the county commissioners shall cause such road to be cut out and opened at the expense of the county ; and after being so opened, the same shall be kept in repair by the supervisor, as in other cases.

Punishment of supervisor.

SEC. 17. Any supervisor who shall neglect or refuse to perform faithfully any duty or duties required of him by this act, shall be liable to be indicted ; and on conviction, shall be fined not less than three, nor more than twenty dollars, for every such offence. The county commissioners shall have power, at any time to remove from office, any supervisor who shall fail or refuse to perform his duty : but such removal shall not excuse such supervisor from being punished by fine as aforesaid, for any breach or omission of duty, which may have occurred before such removal.

Commulations of labor.

SEC. 19. The supervisor is authorized to contract with any person or persons to discharge his or their road labor, or any part thereof, by opening, improving, or repairing a road, or part of a road, or by building a bridge, or a causeway, or by furnishing materials for the same, or by erecting guide posts, and making guide boards. He is also empowered to receive in lieu of any portion of the labor required by this act, the use of such teams, carriages, road scrapers, and ploughs, as may be necessary, on such terms as he shall deem reasonable.

Road scraper may be purchased.

SEC. 20. The county commissioners shall have power, whenever the situation of the county treasury will permit, and the condition of the roads shall require it, to purchase a suitable number

of road scrapers, to be used in raising and draining public roads within the county.

SEC. 21. If any person or persons shall, for the convenience of themselves or neighbors, wish to have a cart road laid out from the dwelling or plantation of any person, or from or to the highway or public road, or from one highway to another, the person so applying, shall advertise his intention, and obtain a petition as required by this act in the case of public roads ; and upon reading the petition as aforesaid, which petition shall not contain less than fifteen signers, the court shall direct a view of the same ; and upon return made, if there are no objections, the court shall further direct the same to be laid out in a proper manner, but the breadth thereof shall not exceed 30 feet. The said road shall be opened, and kept in repair by the persons applying for the same : *Provided*, if any person shall be injured by the running of the said road or cartway, through his or her improved land, the same shall be made known to the county commissioners' court, at their next court thereafter ; and unless the party praying for the opening of said road or cartway, shall pay to him or her complaining of the same, the amount of damage done to his or her lands, by the running of said cart road, to be ascertained by three freeholders appointed by the court, the said road shall not be so opened. If any owner or owners of any land, through which said cart road may pass, shall be desirous of improving his or her lands, they shall be permitted to alter and change said cart road : *Provided*, the ground on which they propose to turn it, is as good, and shall not increase the distance more than one twentieth part thereof.

SEC. 22. All fines imposed by this act which are not otherwise expressly provided for herein, may be recovered by action of debt, before any justice of the peace of the county, in the name of the county commissioners, for the use of the county. *Fines how recovered.*

SEC. 23. All laws heretofore enacted on this subject are hereby repealed : *Provided*, that the rights which have accrued, or penalties incurred under the laws by this act repealed, shall not be impaired or affected by the passage of this act ; but the same shall be enforced according to the laws in force at the time the right accrued or penalty was incurred. *Acts repealed.*

This act to take effect and be in force on the first day of March next.

BECOME A LAW, Feb. 12, 1827.

AN ACT to amend an "Act to provide for the establishment of Ferries, Toll Bridges, and Turnpike Roads," approved, February 1, 1827. *In force May 1, 1829.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That so much of the act to which this is an amendment, and so much of the act entitled "An act supplemental to an act, entitled 'An act to establish and regulate* *Laws repealed.*

ferries,' (approved February 20, 1819,) approved, February 12, 1827," as prohibits the establishment of any ferry or toll bridge, within three miles of any other ferry or toll bridge heretofore established, or which may hereafter be established under the provisions of the acts aforesaid be, and the same are hereby repealed.

Penalty for ferrying contrary to law.

SEC. 2. If any person or persons, except those whose ferries or toll bridges have been, or shall hereafter be established and confirmed before this act takes effect, shall, at any time, run any boat or boats, or other craft, or erect any toll bridge or toll bridges, on or across the waters of the Mississippi, Ohio, Illinois, or Great Wabash rivers within two miles, or on, or across any other river, creek, or water course in this state, within one mile of any such established ferry or toll bridge, he, she, or they so offending, shall be liable to the same penalties and forfeitures as are prescribed in the eleventh section of the act to which this is an amendment.

This act to take effect from and after the first day of May next.

APPROVED, Jan. 22, 1829.

In force March 2, 1833.

AN ACT to amend an act entitled "An act concerning Public Roads," approved, Feb. 12, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That so much of the eleventh section of the act to which this is an amendment as requires the county commissioners' court to appoint the county surveyors as one of the commissioners or viewers to locate or alter roads be, and the same is hereby repealed.

Part of act repealed.

APPROVED, March 2, 1833.

In force Feb. 3, 1835.

AN ACT concerning Public Roads.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all roads within this State, which have been laid out in pursuance of any law of this State, or of the late Territory of Illinois, and which have not been vacated in pursuance of law, are hereby declared to be public highways.

SEC. 2. The county commissioners' courts of the several counties of this State, shall have, and are hereby vested with general superintendence over the public roads within their respective counties.

SEC. 3. The county commissioners' court of each county, shall, at their March term, or as soon thereafter as may be, in each and every year, lay out and divide their respective counties into such road districts as they shall deem convenient and proper, defining accurately the boundaries of said districts, and they shall appoint one supervisor in each district, who shall serve one year, and continue in office until a successor is appointed.

All roads declared public highways. County commissioners vested with general superintendence thereof. Shall divide their counties into road districts. And appoint supervisors.

SEC. 4. It shall be the duty of the clerk of the county commissioners' court in each county, to make out and deliver to the sheriff, written notices to all the supervisors as aforesaid, within ten days after such appointment has been made, informing them of their said appointment, and describing the bounds of their respective districts, and the roads therein; and the said sheriff shall immediately deliver the said notices to the persons to whom they shall be directed respectively, and if any supervisor shall refuse to accept his said appointment, the sheriff shall return the said notice to the clerk who issued the same as aforesaid, noting such refusal on the back thereof. But if the said supervisor shall agree to accept the same, then the sheriff shall notify the said clerk of such acceptance, and the said sheriff shall, in all cases, make return of acceptance or refusal, within twenty days after the delivery to him of the notice aforesaid. For any failure on the part of the clerk to make out and deliver to the sheriff any of the notices required by this section, he shall be fined in the sum of ten dollars, and the sheriff shall incur the same penalty for any failure to deliver any one of said notices in the manner and within the period herein prescribed.

Clerk to notify supervisors of their appointment.

SEC. 5. When any person shall refuse to accept the appointment of supervisor, he shall be fined five dollars, to be appropriated to road purposes: *Provided,* That the commissioners' court, may excuse any supervisor from the payment of said fine, upon being satisfied that such person ought not to have been appointed. Whenever the office of supervisor shall become vacant, the county commissioners' court at their next term, shall appoint another supervisor to supply said vacancy: *Provided,* That any two of the county commissioners of said county, shall have power to appoint a supervisor to fill said vacancy until the next term of said court, should such vacancy occur.

Person refusing to accept the appointment.

SEC. 6. It shall be the duty of each supervisor to cause all the public roads within his district to be kept well cleared, smooth, and in good repair, causing all stumps to be cut low, so as to afford at all times, a free and safe passage to wagons and other carriages along such roads; to cause bridges and causeways to be made whenever the same shall be necessary; and to keep the same in repair, and to cause to be erected and kept in repair at the forks or crossing place of every public road, a post with plain inscriptions thereon, in large letters and figures, giving the direction and distances to the most noted places to which said road may lead.

Duty of supervisors

SEC. 7. Whenever any public road shall be obstructed by fallen timber, or in any other manner, and when any bridge or causeway shall be destroyed or become impassible or dangerous to travelers, it shall be the duty of the supervisor to cause such obstruction to be removed, and to have such bridges or causeways rebuilt or repaired, and for that purpose he shall call out the persons bound to labor on the road in his district, or as many of them as may be necessary; but if the persons bound to perform such labor in his district, shall have previously performed the number of days required by this act, or if the labor due from such persons shall not be sufficient, he then shall proceed to hire as many laborers or teams as may be necessary to remove such obstructions, or

Roads obstructed, how cleared

repair such damages: *Provided*, the costs shall not exceed ten dollars; and if the cost of such work shall be estimated by said supervisor, to exceed ten dollars, then he shall report such obstruction or damage to any two or more of the county commissioners, whose duty it shall be, immediately, to cause such obstruction to be removed, or such bridge or causeway to be rebuilt or repaired, as the case may be, either by ordering the supervisor to hire laborers and teams for that purpose, or by making a contract with some fit person or persons, as they may deem best; and all moneys required to carry any of the provisions of this section into effect, shall be paid out of the County Treasury.

Penalty for obstructing roads.

SEC. 8. If any person shall obstruct any public road by falling a tree or trees across the same, by encroaching upon or fencing up the same, or by placing any other obstruction therein, he shall forfeit for every such offence, a sum not exceeding ten dollars, and a sum not exceeding three dollars for every day he shall suffer such obstruction to remain after he shall have been ordered to remove the same, by any supervisor, county commissioner, justice of the peace, or householder; and if any person shall purposely destroy or injure any bridge or causeway, or remove any of the timber or plank thereof, or destroy or deface any guide post on a public road, or dig any drain or ditch across a public road, such person so offending, shall be indicted, and on conviction, shall be fined in any sum not less than five dollars, nor more than one hundred dollars: *Provided, however*, That this section shall not be construed to extend to any person who shall lawfully cut down any timber for rails, fire wood or other purposes, and who shall immediately remove the same out of the road, nor to any person through whose land a road shall run, who shall dig a ditch or drain across such road, or drain and keep the same in good repair.

County commissioners authorized to locate roads in their respective counties.

SEC. 9. The county commissioners' courts are hereby authorized to cause new public roads to be located and made within their respective counties, and to alter or vacate public roads within their counties, except State roads. No road when ordered to be opened, shall be less than thirty, nor more than fifty feet wide; but bridges need not exceed fifteen feet in width.

Applications for a new road, how made.

SEC. 10. No new road shall be opened by order of the county commissioners' court, unless the same shall be applied for by at least thirty-five voters, except in counties which shall not have more than three hundred voters, when only fifteen shall be required. Such applicants shall deposit in the hands of the clerk of the county commissioners' court, a sufficient sum of money to pay the viewers. If their report be in favor of establishing the road, the money so deposited, shall be returned to the persons who deposited the same; but if the report be unfavorable, the expenses of the view shall be paid out of the money so deposited; and every person applying for such new road, shall contribute one day's labor in addition to the number of days required by this act, towards making such road. The clerk of the county commissioners' court shall furnish each supervisor, through whose road district such new road shall pass, with a list of the persons who petitioned for the same, and any such petitioners who shall not reside within some

district through which such new road shall pass, shall be required to perform the day's labor herein required of him, under the direction of the supervisor of the nearest road district, and for failing to do so, after being duly notified, he shall be fined in the sum of one dollar.

SEC. 11. When a new road shall be applied for as aforesaid, the county commissioners' court shall appoint three suitable persons to view the ground proposed for the same, and if, after such view, the viewers shall believe the road applied for to be necessary, they shall proceed to locate the same upon the nearest and best route, having due regard to private property, designating its course through prairies and improved land, by fixing stakes in the ground, or by ploughing two furrows at the distance apart of the full width of the road, and through the timbered land by marking the trees, and make report thereof to the next county commissioners' court; but after the view, if they deem such road unnecessary or improper to be made, they shall report their opinion to that effect, to the next term of said court.

County commissioners to appoint viewers.

Their duties.

SEC. 12. Whenever it shall be represented to the county commissioners' court, by a petition of thirty-five voters, that a public road established by said court, or any part thereof, is useless or burthensome, the said court upon a sufficient sum of money being deposited with the clerk to pay the expense of a review, (such money to be returned if the road shall be declared useless,) shall appoint three persons to view the same; who shall report to the said court at the next term after such appointment, whether such road in their opinion be useless and burthensome, together with the reasons for such opinion, and the county commissioners may then order such road to be vacated, if, in their discretion, they shall deem such order proper: *Provided*, That no petition, praying for the establishment or vacation of a public road, shall be received by the said court, unless the said petitioners, or some of them, shall have given twenty days public notice of such application, by a written notice posted on the doors of the court house and county clerk's office of the proper county.

Application for vacating roads, how made.

SEC. 13. Whenever a new road shall be located, the county commissioners shall immediately cause the supervisors of each district through which such road shall pass, to be notified of such location, and it shall be the duty of the said supervisors to make such roads within their respective districts, and keep the same in repair, so far as the labor of the persons bound to work on said road shall enable him; and if such labor be insufficient, the county commissioners shall cause the same to be cut out and opened at the expense of the county, whenever, in their opinion, the funds of the county will justify such expense; and after being so opened, the same shall be kept in repair by the supervisors as in other cases.

When new roads are vacated, duty of supervisors thereof.

SEC. 14. The county commissioners' court shall have power, at any time, to remove from office any supervisor who shall fail or refuse to perform his duty. The county commissioners' court shall have power, whenever the situation of the County Treasury will permit and the condition of the roads shall require it, to purchase a suitable number of road scrapers, to be used in raising and draining public roads within the county.

County commissioners may remove supervisors from office.

Persons wishing to have a cart road, how to proceed.

SEC. 15. Any person or persons desirous of having a cart road laid out, for his or their convenience, from the dwelling or plantation of such person or persons, to any public road, or from one public road to another, or from one lot of land to another, shall present a petition to the county commissioners' court of the proper county, setting forth the reasons for desiring such road, and describing the points from and to which said road is desired to pass; and the court shall, upon a sufficient sum of money being deposited to pay for viewing such road, appoint three freeholders to view the same: *Provided*, That twenty days notice shall be given of the intention to present such petition, to each person residing in the county through whose land such road is desired to pass, and also by posting up a notice thereof on the doors of the court house and clerk's office of the county for the same period, and the viewers, when appointed, shall examine the route proposed for such road, and shall examine any other route which they may deem proper, and if they shall be of opinion that a cart road is necessary and proper from and to the points named in the petition, they shall lay out the same in such manner as to produce the least inconvenience to the parties through whose land the same shall pass, and shall make a written report to the court, describing the route of the road, and the numbers of the lots of land through which the same shall pass, and naming the owners thereof, if known, which report shall be recorded at length on the record book of the court, and shall be made at the succeeding term of the court after the viewers are appointed; and if, upon the return of the viewers, the court shall be of opinion that the road is necessary, an order shall be made establishing the same, not exceeding thirty feet wide; and the person or persons applying for the road, may proceed to open the same: *Provided*, That no such road shall be allowed to pass through any orchard, garden or yard: *And provided, also*, That if any owner of land shall object to the opening such road, the same shall not be opened until the person objecting shall be paid all damage to be sustained by the opening thereof, to be ascertained in the manner provided for assessing damage in case of a public road, by the act entitled "An act concerning the right of way, and for other purposes," approved, February 28th, 1833. But if no objection be made to the opening of such road, the person or persons applying therefor, their heirs and assigns shall have a right of way upon the same forever thereafter: *Provided, further*, That any owner or owners of land through which such road shall pass, may at any time change the same on different ground, but the distance shall not be increased more than one twentieth part thereof, nor the road placed on worse ground.

Number of days each person is required to labor on roads.

SEC. 16. The county commissioners' court of each county in this State, at their March term annually, shall fix and enter upon the records of their court a certain number of days that each able bodied man, between the age of twenty-one and fifty years, shall do upon some public road within the county during that year: *Provided*, That in no case shall said court be authorized to fix any number less than one, or to exceed five days, as a labor tax. The clerk of said court shall append the number of days fixed as afore-

said, to the notice of each supervisor appointed in said county. The supervisor, or any person under him, for the purpose of building or repairing any bridge or causeway, by order of the county commissioners' court, is hereby authorized to enter upon the nearest unimproved land, and to cut and haul away timber, or to quarry and haul rock or gravel, which may be necessary for that purpose: *Provided*, he shall not take away timber already cut, or any rock or gravel already quarried for another purpose, without leave from the owner or his or her agent: *Provided, also*, That unless the owner, or his or her agent, shall first consent to the cutting of timber and to the quarrying of stone, the supervisor shall call upon two discreet householders to value the materials about to be used. If the owner of the materials or his agent shall see proper, he may choose two other discreet householders to act with such as may be chosen by the supervisor, and if they cannot agree, the four shall choose a fifth as umpire; and the five, or a majority of them, shall make out their award, under their hands and seals, and transmit it to the clerk of the county commissioners' court, who shall file and preserve the same, which award shall be final and conclusive of amount of damages sustained by such persons, and the amount so awarded shall be paid to the owner of the materials, or his or her agent, out of the County Treasury. The county commissioners' courts are hereby authorized to allow each road viewer one dollar for each day's service necessarily performed viewing public roads.

SEC. 17. The county commissioners' court in each county of this State, may, (when in their opinion the public good requires it,) at their March term of said court, or as soon thereafter as practicable, in every year, levy a county tax on every tract of land situated in their respective counties, not to exceed one half of the annual State tax, as is or may be provided in the revenue law annually, (except such lands as are exempt from taxation by the compact with the General Government.) Said tax shall be assessed at the same time, and in the same manner, as provided for in the revenue law aforesaid, to be collected and paid into the County Treasury, except when the same shall be discharged in labor as hereinafter provided.

SEC. 18. The county commissioners' court shall, at their March term annually, whenever they levy the tax as aforesaid, direct in what road district and for what object, whether for erecting bridges or otherwise, the amount of money which may be collected from said tax, shall be expended, giving each supervisor notice thereof, attached to the notice of his appointment.

SEC. 19. It shall be the duty of the Auditor of the State of Illinois, on or before the first Monday of April next, to furnish the clerks of the several county commissioners' courts in this State, with a list of all the lands subject to taxation in their respective counties, and every year thereafter, all other lands which may subsequently become taxable on or before the first Monday in February annually thereafter.

SEC. 20. Whenever the county commissioners' court shall levy said tax, it shall be the duty of said clerk of said court, to copy the order respecting the same, and deliver it to the sheriff, whose

Supervisor may enter upon unimproved land to obtain materials for the construction of any road or bridge. Proviso.

Compensation to road viewers.

County commissioners to levy tax.

How expended.

Auditor to furnish clerks a list of taxable land in their counties.

How assessed.

duty it shall be, within five days thereafter, to deliver the same to the County Assessor, and it shall be the duty of the Assessor to open requisite columns in his tax book, under the head of "Road Tax," and to assess the same by extending the valuation and amount of tax at the same time he assesses the State tax, by calling upon every resident of his county to list his land or other property, as the case may be, noting the county where each tract of land is situated, number of acres, amount of tax, and for what year.

Duty of assessor and clerks.

SEC. 21. The Assessor shall file a list of the resident lands in the clerk's office of the county commissioners' court immediately after he has completed the same, and the Assessor, in conjunction with the clerk, shall compare the same with the transcript of lands furnished by the Auditor as aforesaid, and shall then list all lands on said transcript, situated in the county, which are not included as resident lands, estimating the value thereof, together with the non-resident lands, agreeably to the provisions which do or may exist in the revenue laws annually; and when said list shall be completed by the Assessor and clerk, it shall then be the duty of said clerk to make out abstracts of all such tracts of land as may be situated in other counties, entered as resident lands as before provided, and transmit the same by mail to the clerk of the county commissioners' court of the county in which such lands are situated; and it shall be the duty of the several clerks, on receiving said abstracts, to compare the same with their non-resident lists, and note opposite of each tract, the words "Paid in the county of _____," (as the case may be,) so that every resident may discharge his said tax in labor, and in the county and road district where he may reside.

Further duty of clerks.

SEC. 22. Whenever the tax book is completed as aforesaid, it shall be the duty of the clerk of said court, to make out a transcript of each tract of land belonging to residents of the county, with the amount of tax, for what year, and within which road district in the county, and deliver the same to the sheriff of the county, whose duty it shall be to deliver the same to the several supervisors of the county within fifteen days thereafter.

Tax may be discharged in labor.

SEC. 23. When the supervisors shall receive said list or transcript as aforesaid, he shall notify each person within his road district, (if he or they may be found in the limits of the same,) of the amount of their taxes, and that on such a day or days, said taxes may be discharged in labor, fixing the time for working the road, so as to give not less than three, nor more than five days notice, at seventy-five cents for each faithful day's labor, computing a day's labor at eight hours service. The supervisor is hereby authorized to contract for materials for building bridges, causeways, erecting guide boards, and repairing roads in discharge of the taxes aforesaid.

Delinquent lands to be sold.

SEC. 24. The clerk of the county commissioners' court, at the time he makes out the list of resident lands for each supervisor of the county, shall also make out the account of each non-resident's tax, stating the name of the patentee and present owner, according to the best information he is in possession of, which list shall accompany the resident list of the proper supervisor, and may be discharged in labor, as directed by the county commissioners' court, under the superintendence of said supervisor. The super-

visor having a list of non-resident lands, shall give at least ten days notice, by putting up a written or printed notice on the door of the court house of his county, naming the non-resident delinquent persons, tracts of land and amount of tax due from each person, and that the same may be discharged in labor, at such a time and place, and on or before the first day of December annually, the supervisor shall return a list of all delinquent persons; whereupon, it shall be the duty of the clerk of said court, at the time he makes out the list of non-resident lands to be sold for taxes under the revenue laws of the State, to include the amount of the county tax which may remain unpaid; and also, such lands as are taxed in the county and are not delinquent to the State, and advertise and sell said lands at the time and place, in the same manner as required by said revenue law; and conveyances shall be made and subject to redemption as provided in said revenue law. The proceeds of said tax sale shall be paid into the County Treasury, to be appropriated under the direction of said court, for building bridges, erecting guide boards, opening roads, and for keeping the same in repair.

SEC. 25. All lands sold under the provisions of this act, and conveyed as aforesaid, shall vest the purchaser to all intents and purposes with the fee simple of said land, subject to redemption as before provided. *Subject to redemption*

SEC. 26. The clerk of the county commissioners' court is hereby authorized to receive all taxes due the county as aforesaid, to give receipts for the same, noting in said receipts that the amount so paid, is for a county tax, and for what year. Each supervisor, after discharging his labor tax, as required by this act, shall, on settlement of his accounts annually, be allowed seventy-five cents for each day's service superintending the work as aforesaid, to be paid out of the moneys raised by the provisions of this act. The sheriffs and clerks who render service under this act, and for postage paid by the clerk, shall be allowed such a compensation as the county commissioners' court shall deem just and equitable, to be paid out of any money raised as aforesaid. *Clerk authorized to receive for taxes.*

SEC. 27. Every person who shall wish to discharge his county land tax in labor, shall be permitted to do the same as herein provided, at the rate of seventy-five cents per day, and the supervisor is hereby authorized to dock any person of his wages who does not perform eight hours faithful labor each day. *Allowance per day for labor.*

SEC. 28. Any person who shall be notified to perform road labor, as herein provided, and shall fail to perform the same, shall forfeit and pay the sum of seventy-five cents for each day neglected to be performed; and the supervisor is hereby authorized to prosecute such delinquent person, in the name of the county commissioners, before any justice of the peace in the proper county; and said supervisor shall be a competent witness against said delinquent, and in case of default as aforesaid, the justice shall enter up judgment against said delinquent for the amount so forfeited, with costs of suit, and issue execution forthwith: *Persons failing to perform road labor. May be prosecuted.* *Provido.* That the defendant or supervisor, in all such cases, shall be allowed an appeal, as in other cases of trial before justices of the peace.

SEC. 29. County commissioners in each county in this state,

County commissioners may levy tax on personal property.

whenever the labor herein provided is found insufficient, may levy a tax on personal property, not exceeding one-fourth per cent. per annum; but shall not, during the same year, levy a land tax, but at said March term, elect in their discretion, whether they will levy a tax on land or personal property.

Supervisors neglecting to perform their duties

SEC. 30. Any supervisor who neglects to keep the roads in his district in good repair, agreeably to the provisions of this act, or fails to perform any other duty herein required, shall be liable to indictment, and on conviction thereof, shall be fined in a sum not less than five dollars, and not exceeding fifty dollars, to be expended on some road within the district of said supervisor.

Clerk to give bond.

SEC. 31. The county commissioners of each county shall cause their clerk to enter into bond, with surety or sureties, in such sum or sums as they may deem sufficient for all moneys that may be received by him under the provisions of this act, conditioned that he will promptly and faithfully pay over to the County Treasurer all moneys received by him under this act, and all penalties and liabilities incurred under this act, shall be recoverable in the name of the county commissioners, before any justice of the peace of the proper county, or other court having jurisdiction thereof.

Roads running through private property.

SEC. 32. When any road or roads, laid out as aforesaid, shall run through the land of any individual or individuals, and the owner of the same shall not give his consent to the opening of said road through the land as aforesaid, it shall be the duty of the supervisor to go before the nearest justice of the peace, who shall issue his warrant, directed to some constable, commanding him to summon three householders, unless they can be otherwise had, who, after being sworn by some justice of the peace, well and truly to examine the injury that will be done the individual or individuals aforesaid, and the damage that will accrue to him or them by the opening of the road aforesaid; taking into consideration the advantages to said individual by opening the road aforesaid, who, after being thus sworn, shall go upon the land aforesaid, make report in writing, particularly stating the damage as well as the advantage to the owner of said land, and sign the same, and return said report, in writing, to the justice before whom they were sworn as aforesaid, who shall transmit the same to the clerk of the county commissioners' court, who shall file the same in his office. The amount of damages so assessed, it shall be the duty of the county commissioners' court to order to be paid out of the County Treasury.

Supervisors to give notice of the time and place of commencing work.

SEC. 33. The supervisors appointed by virtue of this act, shall be required to give each person owing road labor, three days notice of the time and place that they shall commence work, with such tools as shall be necessary for them to use. Any person shall be permitted to furnish a substitute, equally able as himself, to perform said road labor. All moneys collected from delinquents, not otherwise provided for in this act, shall be expended by the supervisor in making or repairing roads or bridges in his district, as he may deem expedient.

Laws repealed.

SEC. 34. That all laws heretofore passed upon the subject of county roads, be, and the same are hereby repealed; but rights acquired, or liabilities incurred thereby, are not hereby affected:

Provided, That nothing herein contained, shall be construed so as to operate as a repeal of the act, entitled "An act concerning the right of way, and for other purposes," approved, February 28th, 1833.

APPROVED, Feb. 3, 1835.

AN ACT declaratory of the Law in relation to the Road Tax. In force Jan. 15, 1836.

WHEREAS, It is represented to the present General Assembly, that several of the clerks of the county commissioners' courts, have required citizens of this state to pay a road tax upon lands situated in counties where a road tax has been levied, because, in the counties where such citizens reside, no road tax has been levied, notwithstanding the law requires those clerks to mark the road tax "paid," upon all lands which are listed for taxation in other counties, whether a road tax upon land has been levied in such other counties, or not; Therefore,

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That if any land listed for taxation, in any county in which it is not situated, shall be advertised and sold, in the county in which it is situated, for any road or county tax thereon, such sale shall be deemed to be void; and it shall be the duty of the clerk who sold the same, or his successor in office, on ascertaining the fact, that such land was previously listed in some other county for taxation, to cancel the sale thereof; and if the purchase money still remains in his hands, to refund the same to the person who purchased the land at the tax sale. If the money shall have been paid into the county treasury, the clerk shall issue an order upon the county treasurer, who shall pay the same without delay, out of any money in the treasury.

SEC. 2. It shall be the duty of the secretary of state, to cause this act to be published, in the newspaper printed by the public printer, immediately upon its passage.

APPROVED, January 16, 1836.

AN ACT to amend an act concerning Public Roads. In force Jan. 15, 1836.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the supervisors of the several counties in this state, to cause all the road tax in their respective districts, which is to be discharged in labor, to be so discharged previous to the first day of November, annually; and the delinquent list which the supervisor is required to return to the clerk, according to the 24th section of the

to act which this is an amendment, shall be so returned on or before the first day of November, annually. Any supervisor failing to comply with any of the provisions of this act, or of the act to which this is an amendment, shall be fined in any sum not less than five dollars, and not exceeding fifty dollars ; which shall, upon the complaint of any person or persons, be recoverable before any justice of the peace of the proper county, any thing in the act to which this is an amendment, to the contrary notwithstanding.

May be fined for neglect.

Duty of co. comm'rs.

SEC. 2. That the county commissioners' courts, in each and every county within this state, whenever the finances of their county will admit, be, and they are hereby authorized and required, to expend on the public roads, in making causeways, erecting bridges, &c., in their respective counties, any sum not exceeding one-third of the amount received into the county treasury of such county, in the current year immediately preceding the time of expending said sum or sums of money ; which said improvements, or repairs, shall be made by the county commissioners' court, by letting out contracts to the lowest and best bidder or bidders, and in all cases taking bonds of the undertaker, payable to the county commissioners, and their successors in office, for the due and faithful performance of their respective contracts: and the said county commissioners' court, upon being fully satisfied that the said contract or contracts, have been fully completed, shall draw a warrant in favor of said contractor, on the county treasury, for the payment of the same, which shall be paid out as other county orders.

This act to be published

Act repealed.

SEC. 3. The secretary of state shall cause this act to be published in the newspaper published by the public printer, immediately after its passage, for three weeks in succession, the cost of printing to be paid out of the contingent fund. The 18th section of the act to which this is an amendment, is hereby repealed.

APPROVED, January 18, 1836.

In force March 3, 1837.

AN ACT to amend an act entitled "an act to amend an act concerning public roads," approved January 18th, 1836.

Duty of supervisors to make a list of all names.

Labor to be credited.

Refusal to labor after notified shall forfeit \$1 25 per day.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That every supervisor in each county in this state shall hereafter within twenty days after having accepted his appointment, make out a list of the names of every person liable to a labor tax within his district, and shall add thereto all such persons as may remove into said district from time to time, and who are liable to said tax, and on the first Monday of March annually, he shall return the said list to the county commissioners court after having credited each individual with the labor he may have performed.

SEC. 2. Any person who shall refuse or neglect to perform his labor tax as required by the act concerning public roads, approved February 3d, 1835, after having been notified agreeably to the pro-

visions of said act, shall forfeit and pay the sum of (\$1 25) one dollar and twenty-five cents for each day so neglected to be performed, to be recovered with costs of suit before any justice of the peace within said county, to be expended on the roads where such persons were required to labor.

How recovered.

SEC. 3. Any supervisor who shall neglect or refuse to prosecute such delinquent person before he makes his returns to the county commissioners' court as aforesaid, shall forfeit and pay double the amount of such delinquent's labor tax, to be recovered before any justice of the peace in the county, in the name of the county commissioners, for the use of the county ; and it is hereby made the special duty of the clerk of said court immediately thereafter, to prosecute such delinquent supervisor and to pay over said forfeiture when collected, to the county treasurer, and also, to prosecute all delinquent supervisors who may neglect or fail to make due return of the delinquent list as provided by the first section of an act to amend an act concerning public roads, approved January 18th, 1836. All moneys collected under the provisions of this act shall be appropriated by the county commissioners' court to the improvement of such roads as may be situated in the district from which the same may have been collected.

In case supervisor shall neglect.

Shall forfeit.

Special duty of clerk of co. court.

Shall prosecute delinquent supervisor.

All moneys collected appropriated to improvement of roads.

Persons may discharge tax by labor.

SEC. 4. Hereafter every person who may wish to discharge his road land tax in labor, shall be permitted to do the same at the rate of one dollar per day including what is now allowed by law.

Pay of supervisor.

SEC. 5. Each supervisor, on settlement of his accounts, shall be allowed one dollar and twenty-five cents per day, including what is now allowed by law for each day's service on the road and notifying his hands after discharging his own tax.

SEC. 6. Every commissioner hereafter appointed by the county commissioners' court to view and locate, or review and relocate any public road or cart-way shall, before entering upon the duties of their appointment, be severally sworn faithfully to perform the duties assigned them by virtue of their appointment, which oath may be taken before the clerk of the county commissioners' court or any justice of the peace in the county.

Commissioners shall be sworn.

SEC. 7. Hereafter every petition for a view and location or re-view and relocation of a road shall have at least thirty signers, whose residence shall be within five miles of the route proposed to be viewed or reviewed ; Provided, however, that if there shall not be that number residing within the bounds of such route, the said court may appoint viewers on a petition with a less number of signers when they deem the public good requires it, any law to the contrary notwithstanding.

Petitions for roads, have 30 signers.

Proviso.

Petition with less number.

SEC. 8. That in all cases where the county commissioners find it necessary, from the nature of the banks of any stream, to erect a bridge a greater or less distance above or below the state or county road as established by law, the said county commissioners' court of any county may, in their discretion, at any regular term of their court, so far alter the direction of any state or county road as may require said road to cross the stream at the point selected by the court for the erection of such bridge ; provided,

State or county road may be changed.

the said variation shall not exceed five chains on either side of said road.

Duty of grand jurors in regard to roads.

SEC. 9. Hereafter every supervisor of highways or roads, who shall fail to perform the duties required of him by law shall be deemed guilty of a misdemeanor, and it shall be the duty of the circuit court, at any time, to cause the grand jury to be charged specially to inquire into the state and condition of the public roads and into the conduct of supervisors in their respective counties, and it shall be the duty of each and every Grand Juror to take notice and give information to the Grand Jury of the state of the roads in his neighborhood and of all and every neglect or omission on the part of the supervisors.

May make presentment of.

SEC. 10. When any grand jury shall be satisfied that any supervisor has neglected or failed to perform any of the duties required by law, it shall be their duty to make a presentment of the facts, and the State's attorney shall, thereupon, write out a presentment in form against the supervisor, stating therein, with reasonable certainty, in what particular the said supervisor has failed or neglected to perform his duties, the caption of which shall be the same as an indictment, and if the grand jury agree to such presentment, the same shall be signed by the foreman and presented to the court, to be proceeded on as is hereinafter directed.

Court shall order summons.

SEC. 11. When any presentment shall be made against a supervisor, the court shall order a summons to be issued thereon, directed to the sheriff of the county in which the presentment was found, requiring the supervisor to appear before the court and answer to such presentment, and show cause why he should not be fined; which summons shall be returnable to the succeeding term of the court or to the same term at which the presentment was found, in the discretion of the court. The sheriff shall execute the summons by reading the same to the defendant and make return thereof as other process.

Summons when returnable.

Duty of Sheriff.

Witnesses.

SEC. 12. The grand jury shall endorse on every presentment the names of the witnesses by whom the facts presented can be proved, and the clerk shall issue subpoenas for said witnesses, as in cases of indictments.

Powers of circuit court

If found guilty. Fine.

SEC. 13. The circuit court shall have power and jurisdiction, and are hereby required to hear and determine all cases arising under this act, in a summary way, and upon such hearing, if any supervisor shall be found guilty, the court shall fine said supervisor in any sum not less than five nor more than twenty dollars, which fine shall be collected as fines imposed upon persons convicted upon indictments, and shall be paid into the county treasury and applied to road purposes.

SEC. 14. When a supervisor has been served with a summons and fails to appear, the court shall hear the evidence in behalf of the people, and fine or acquit the supervisor according to the testimony.

SEC. 15. Every supervisor presented, shall have the right to subpoena for witnesses and to be heard in his defence as in other cases, and when found guilty shall pay all costs of the prosecution including a fee of two dollars and fifty cents to the state's attorney.

SEC. 16. Clerks, sheriffs, witnesses, and others, shall be entitled to the same fees, in proceedings under this act, which are or may be allowed for similar services under the laws regulating fees. *Officers entitled to fees.*

APPROVED 3d March, 1837.

AN ACT concerning Public Roads.

In force 20th July, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That in all cases where commissioners were appointed to locate state roads by acts passed during the last session of the General Assembly, and said commissioners have from any cause whatever failed to perform the duties required of them, they are hereby authorized to perform the said duties at any time previous to the twenty-fifth day of December next.

APPROVED, 20th July, 1837.

SALINES.

AN ACT to prevent cattle from being injured in the vicinity of Salines.

In force Dec. 26, 1824.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the owners, renters, or lessees, of any salines within this state, who shall hereafter cause to be exposed any pickle, brine, or salt water, which in its nature is injurious and hurtful to any horned cattle, horses, hogs, sheep, mules, or other domesticated animals, without having erected good and sufficient barricades to prevent such animals and cattle from having access to the same, to the injury of such cattle and their owners, by causing the same to be injured or die; that such person or persons, so offending against the provisions of the foregoing statute, shall be liable to prosecution before an court of competent jurisdiction in this state, and be liable in an action of damages, to the owner or owners of any cattle that may suffer or die by such neglect, in the full amount of their value and costs. *Owners of salines to barricade the same.*

SEC. 2. *Be it further enacted,* That this law shall be in force from and after its passage. *For failure to pay damages.*

APPROVED, Dec. 14, 1824.

In force
March 2,
1833.

AN ACT to amend an act concerning the Saline Reserves, a Penitentiary, and the improvement of certain Navigable Streams, approved, February 15, 1827.

Commissioners authorized to correct their report.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the commissioners appointed under the first section of the above recited act, to select thirty thousand acres of the Gallatin county saline reserve, be, and they are hereby authorized to correct their report made to the commissioner of sales, as reported by them.

APPROVED, March 2, 1833.

In force
Feb. 27,
1833.

AN ACT relating to the office of Commissioner of sales of Saline Lands.

Part of former act repealed.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the sixth section of the act entitled "An act concerning the saline reserves, a penitentiary, and the improvement of certain navigable streams," approved February 15, 1827, be, and the same is hereby repealed.

Commissioner to be elected by legislature

SEC. 2. The senate and house of representatives shall, at the present session of the general assembly, and every two years thereafter, proceed to elect by joint vote of both houses, some suitable person to be commissioner of the sale of the saline reserve lands in the county of Gallatin, who shall enter into bond in the sum of fifteen thousand dollars, who shall perform all the duties in relation to said office, and such sales as are now required by law, and who shall receive the like emoluments as are by law allowed to the commissioners appointed by the said sixth section herein repealed.

This act to be in force from and after its passage.

APPROVED, February 27, 1833.

In force
March 2,
1833.

AN ACT concerning the Gallatin County and Vermilion County Saline Lands.

Minimum of price of land in the Gallatin saline hereafter to be fifty cents per acre.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That so much of the acts heretofore passed as limits the minimum price for which the lands in the Gallatin county saline reserve may be sold, to seventy-five cents per acre, be, and the same is hereby repealed. And that hereafter the least price for which said lands

heretofore selected for sale shall be sold, shall be fifty cents per acre.

SEC. 2. That all persons who may have settled or may settle on any of said saline lands selected, and not yet offered for sale, or to be selected, shall be allowed the right of pre-emption, at the minimum price, of not more than eighty acres each, including his, her, or their improvement: *Provided*, that the land that may be purchased under the right of pre-emption hereby granted, shall run with the sectional lines, and other legal subdivisions.

SEC. 3. That any person or persons wishing to avail himself, herself, or themselves of the provisions of the preceding section, shall file with the commissioner for the sale of the Gallatin county saline land a written notice of settlement and occupancy, in which the tract of land so occupied and improved, shall be particularly described. And before said land is offered for sale, shall prove to the satisfaction of the said commissioners that he, she, or they did improve and settle upon the said land, and that he, she, or they is, or are, at the time of application, in the occupancy and possession thereof. And should two or more conflicting claims be asserted to the pre-emption right of the same tract, the parties shall be respectively required to file their notice and produce their proof as aforesaid, and the said commissioner shall hear the same, and decide the matter according to the right and justice thereof: *Provided, however*, that if upon the presentation of the said conflicting claims, either party desire it, the said commissioner may issue a venire facias, commanding the sheriff, coroner, or any constable of said Gallatin county, to summon six good and disinterested men as jurors, to meet at the time and place named in such writ, to try the matter in controversy between said claimants. And it shall be the duty of the officer to whom such writ may be directed, to execute the same and make return thereof, to said commissioner, and at the time and place appointed, the said commissioner shall empanel and swear the jury summoned as aforesaid, and shall swear all the witnesses presented to give testimony before such jury. And the jury after hearing the testimony in the case, which they were sworn to try, shall make up and return their verdict thereon to said commissioner, which verdict shall be conclusive, and the said commissioner shall award the right of pre-emption to the party in whose favor the said verdict may be rendered: *Provided*, that in all such cases the prior possession or occupancy proven on trial shall have the preference.

SEC. 4. That the said commissioner shall receive for his services under this act, such compensation as is allowed to justices of the peace for similar services. And the officer who may serve the venire, the jurors and witnesses mentioned in the preceding section, shall each be allowed such compensation as is allowed by law for similar services and attendance, in cases before justices of the peace, to be paid by the party against whom the matter shall be determined. And the said commissioner shall tax and certify a bill of costs, in every case tried before him in manner aforesaid, upon which bill either of the officers described in the preceding section may proceed to collect the fees therein taxed as if upon execution.

SEC. 5. That whenever any claim to a right of pre-emption

When a pre-emption right shall be established, claimants shall be allowed to purchase.

shall be established as herein before prescribed, the claimant shall be allowed to purchase the tract applied for, at the lowest price aforesaid, and the said commissioner shall issue his certificate therefor, as in other cases: *Provided*, that no person shall be allowed a pre-emption right to more than one tract of eighty acres. Nor shall any person be allowed the said right by virtue of any assignment or transfer, but shall be, in order to entitle him, her, or them to such right, in the actual occupancy of the tract of land claimed under said right of pre-emption.

Register and receiver of Vermilion saline lands, authorized to sell in forty acre lots.

SEC. 6. That the register and receiver of the Vermilion saline lands shall, and they are hereby authorized to sell the lands within their district whenever the convenience of the purchaser may require, in forty acre lots, by a line running east and west, so as to divide half-quarter sections into quarter-quarter sections.

SEC. 7. This act to be in force from and after its passage.

APPROVED, March 2, 1833.

In force Jan. 23, 1833.

AN ACT concerning the Bond County Saline.

Governor authorized to lease Bond county saline.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the governor of this state be, and he is hereby authorized to lease to such person as he may think proper, the saline lands belonging to this state, situated in Bond county, on such terms as he may think most advantageous to the state; or he may, if he think proper, appoint an agent to take charge of the said saline lands, and preserve the same from waste: *Provided*, That the said agent, if appointed, shall not be entitled to any compensation other than the use of said saline.

APPROVED, Jan. 23, 1833.

In force March 2, 1833.

AN ACT to explain and amend the "Act concerning the Saline Reserves, a Penitentiary, and the improvement of certain navigable Streams," approved, Feb. 15, 1827.

Part of 14th section of the act to which this is an amendment repealed.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That so much of the 14th section of the above recited act as appropriates one fourth part of the proceeds of the sales of the Gallatin saline lands to the improvement of the navigation of the Saline creek, in Gallatin county, be, and the same is hereby repealed; and that the said funds shall be under the direction of the county commissioners of Gallatin county, except as hereinafter directed.

Proceeds of sales mentioned in the first section, how applied.

SEC. 2. That the proceeds of said sales shall be applied as follows, to wit: eight hundred dollars thereof to the improvement of the road leading from Equality, in Gallatin county, by way of the Maple Swamp road, between Equality, in Gallatin county, and

Carlyle, in Clinton county, to be expended under the direction of John Lockhart and John Chosier, who are hereby appointed commissioners for that purpose; and fifty dollars to Daniel Wilbanks, of Jefferson county, as additional compensation for building a bridge across Eagle creek, in Gallatin county; the sum of three hundred dollars to improve the two roads from their fork leading from Equality to Frankfort; said sum to be equally expended on said roads; five hundred dollars on the road leading from Shawneetown to Equality; two hundred dollars on the county road leading from Shawneetown across Cypress to McLeansboro'; two hundred dollars on the road leading from Equality to the settlement commonly called "South America," in Gallatin county; one hundred and fifty dollars on the road leading from Equality to Jonesboro'; seventy-five dollars to be expended under the direction of the county commissioners of Union county; two hundred dollars on the road leading from Shawneetown to McLeansboro', one half of which is to be expended on the Nettle Bottom, and the other half of which is to be expended on the low grounds lying on the south-east side of the Cotton branch; one hundred dollars on the road leading from Equality to Golconda, one half of which is to be under the control of the county commissioners' court of Pope county; one hundred and fifty dollars on the road leading from Equality to New Haven; fifty dollars on the road leading from McFarland's ferry; two hundred dollars on the road leading from Equality to Ford's ferry; and one hundred and fifty dollars on the road leading from Equality to Carmi. The balance of said funds to be applied to Monroe Academy, under the direction of the trustees thereof, and to be drawn upon the order of the county commissioners' court of Monroe county. The money to be expended on Maple Swamp, under the direction of John Lockhart and John Chosier, to be drawn by them or their order from John Marshall, Esq., of Shawneetown, in whose hands the aforesaid funds have been placed.

SEC. 3. That so much of the act, entitled "An act appropriating part of the avails arising from the sales of the Gallatin county saline lands," approved, Jan. 16, 1831, as is inconsistent with, and contrary to the provisions of this act, be, and the same is hereby repealed; and that the agency of Leonard White, under the same, is hereby abolished.

What portion of former act repealed.

SEC. 4. That the agency of the commissioners appointed under the provisions of the fourth section of the act first mentioned aforesaid, be, and the same is hereby repealed.

Agency of commissioners repealed.

SEC. 5. So much of the act, entitled "An act appropriating a portion of the avails arising from the sale of the saline lands in Gallatin county to internal improvements," as appropriates two hundred dollars to be expended on the road leading from Equality to Carmi, is hereby repealed; and the said two hundred dollars shall be paid over to the county commissioners of Perry county. And so much of said act as appropriates two hundred dollars on the road from Equality to Ford's ferry, is hereby repealed; and the said two hundred dollars shall be paid over to the county commissioners of Washington county. And the county commissioners' courts of said counties

Part of a certain act repealed.

shall, respectively, expend the said sums in their respective counties as they shall deem expedient.

John Marshall.

SEC. 6. John Marshall, in whose hands the proceeds of the sales of thirty thousand acres of the Gallatin county saline lands are deposited, is hereby directed to pay to Abraham Irwin and William Burnett, commissioners for expending the appropriation upon the Saline creek, and the road from Equality to Carlyle, the sum of seventy-five dollars out of said funds, for their services in making contracts, &c., under the provisions of the act for selling the saline lands, and also for money paid by them in defending a suit brought against them relative thereto.

APPROVED, March 2, 1833.

*In force
Jan. 28,
1833.*

AN ACT respecting the future discovery of Salt Springs, and to encourage the Manufacture of Salt in this state.

Governor authorized to employ persons to examine salines which may hereafter be discovered.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the governor of this state shall be, and he is hereby authorized, from time to time, as often as he shall receive information that any salt spring or springs have been discovered on any of the unappropriated lands of the United States, or any other lands where such discovery shall have been made previous to the entry and purchase thereof, within the limits of this state, to employ some fit person or persons, if necessary, to examine the same, and ascertain the probable quantity of land necessary for the working of such salt spring or springs so found, or which may have been returned as saline lands, by the surveyor of the public lands: and he is further authorized for and in behalf of the state, to make application to the president of the United States for such quantity of land contiguous to each salt spring so discovered, as may be deemed sufficient for working the same: and also to notify the register of the proper land office of such discovery, and to request that such lands as may be contiguous thereto, and which the president may be requested to set apart for the use of said saline, may be reserved from sale until the result of such application to the president shall be known.

May give written permission to any persons to enter upon such salines.

SEC. 2. For the purpose of encouraging the discovery of salt springs, and the manufacturing of salt, the governor is hereby authorized to grant written permission to any person or persons, or company, to enter upon any such saline reserve as may at any time be obtained under the provisions of this act, where the same shall not have been previously occupied or appropriated, as herein directed and permitted, and to dig or bore for salt water, so as not to commit unnecessary waste or damage to such lands; and if such person or persons, or company, shall succeed in discovering salt water, of sufficient strength, and in sufficient quantity to justify the working thereof, in the estimation of the governor or some competent agent appointed for that purpose, he or they shall be entitled

to the exclusive privilege of boiling the same, and manufacturing salt therefrom free of rent, for the period of ten years, from and after the date of his or their lease; and shall moreover have sufficient timber for fuel and other purposes to carry on such manufacture, for the time aforesaid: and the governor is hereby authorized and required to execute a lease, in behalf of the state, to such person or persons, or company, for a quantity of land in contiguous quarter sections or fractions, sufficient for the use aforesaid, upon such conditions and under such restrictions and forfeitures as he may deem expedient to prevent waste, and to insure the faithful and continued working of said salines: *Provided*, that the original discoverer or discoverers, or his or their assignees, shall in all cases have the right to claim the preference to such permission and lease.

SEC. 3. On granting any lease, as aforesaid, the governor shall at the same time take from the person or persons, or company to whom the same may be granted, a bond with sufficient security, payable to the people of the state of Illinois, for the use of the state, in the penal sum of two thousand dollars, conditioned that such lessee or lessees shall not destroy or injure any more timber than may be necessary for the use of said saline, and that they will, at the expiration of the term for which the same may be granted, or previously in case of forfeiture, under the provisions of this act, peaceably surrender to such person or persons as may be appointed by the governor to act as agent or agents for the state, the possession of the lands thus leased, with all the improvements which may have been made thereon in good repair, except the kettles and pans, or other metal which may have been used for the boiling or evaporating of such water, which shall remain the property of such lessees; which bond shall be filed in the office of secretary of state, and may, by order of the governor, be put in suit for the use of the state, in the circuit court to be holden for the county where the seat of government may be located, whenever any of the conditions thereof shall have been broken by any of such lessees.

Shall take bond from the lessees of such saline.

SEC. 4. If the person or persons, or company to whom any such lease may be executed, as aforesaid, shall neglect or refuse to make the necessary preparation for making salt, within eighteen months after the date of such lease, or shall, at any time after salt making has been commenced, discontinue such operation for any interval of time exceeding twelve months, or shall commit great and unnecessary waste, by injuring and destroying more timber than shall be reasonably required for the working of such saline, such lease or contract shall be considered as forfeited, and such delinquent lessee or lessees shall immediately cease to occupy such lands, or to exercise any of the privileges intended to be granted by this act for the purposes aforesaid. This act to take effect from its passage.

When lessees shall neglect their duty.

APPROVED, January 28, 1833.

In force Feb. 12, 1835.

AN ACT relating to the Sale of the Gallatin Saline Lands.

Commissioners appointed to select five thousand acres of Saline lands.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That Leonard White, Daniel Wood and John E. Hall, be, and they are hereby appointed commissioners to enter upon the Saline Reserve in Gallatin county, and select any quantity of land, not exceeding five thousand acres of land, and if there are any lands selected by the former commissioners which shall interfere with salt making at said Saline, or which is not now likely to sell, the same shall be relinquished by the aforesaid commissioners to an amount not exceeding the said five thousand acres. The said commissioners shall, before entering upon their duties, take an oath before some justice of the peace faithfully to discharge the duties enjoined upon them by this act.*

Shall report to the commissioner of sales.

SEC. 2. *When the said commissioners shall enter upon the duties of their said office, and relinquish old selections and make new ones in lieu thereof, they shall report the same to the commissioner of sales of Saline lands, noting in their said report, the description of lands relinquished and those selected in lieu thereof, making, by separate reports, a distinction between a change of lands in the first and second sections.*

Shall not make any selections within any lease.

SEC. 3. *The said commissioners shall not be authorized to select any lands within any lease, unless the lessee shall relinquish any incumbrance he may have, by virtue of his lease to the said land so selected, in which case the said commissioners shall return the same along with their report, to the commissioner of sales, and all lands to be reselected under this act, shall be sold free from the incumbrances of any lease.*

Persons residing on lands so selected.

SEC. 4. *All persons who have settled on any of the said lands that may hereafter be selected under the provisions of this act, and shall be in the actual occupancy of the same at the period when this act takes effect, shall be entitled to the right of purchasing the same at any time previous to the same being offered for sale, as is hereinafter provided, at the minimum price; and also, all persons shall be entitled to the same right, who shall have made permanent and valuable improvements thereon, tending towards husbandry, or who shall be the owner or occupier thereof at the time this act takes effect: *Provided*, That no one shall be entitled to purchase more than eighty acres under the pre-emption right herein granted.*

Pre-emption claimed by two or more, how decided.

SEC. 5. *In all cases where claims to the right of pre-emption shall be made by two or more to the same tract of land, the same shall be decided by the third section of an act, entitled "An act concerning the Gallatin county and Vermilion county Saline lands," which said section is hereby revived and continued in force for the purpose aforesaid; but in all cases, the preference shall be given to the actual settler.*

Duty of commissioners of sales.

SEC. 6. *After the said commissioners shall have made their report to the commissioner of sales, it shall be his duty to advertise the same for sale in some public newspaper, at least four weeks*

previous to the day of sale, and on that day offer the same as lands having been heretofore offered for sale.

SEC. 7. *The commissioners named in the first section of this act, shall not, in their selection of land, interfere with the manufactory of salt; but shall, in all cases, consult the interest of the state and of the present lessees, as far as making salt is concerned. They shall be allowed the same compensation as other commissioners heretofore have been allowed, to be paid by the commissioner of sales.*

Commissioners in their selection shall not interfere with salt making. Compensation.

SEC. 8. *That the fourth section of an act, entitled "An act to amend an act concerning Saline Reserves, a Penitentiary, and the improvement of certain navigable streams," approved, December 12, 1828, be, and the same is hereby repealed.*

Part of an act repealed.

SEC. 9. *The commissioner for selling the lands authorized to be sold in the Gallatin county Saline Reserve, shall hereafter receive as compensation for his services, and in full compensation for office rent, clerk hire, books, stationery and transportation of the money, five per cent. upon all moneys received by him in the sale of said lands. Said five per cent. to be deducted out of the money so received by him in payment for said lands.*

Compensation of commissioner.

APPROVED, Feb. 13, 1835.

AN ACT relating to the Superintendent of the Gallatin County Saline, and for other purposes.

In force Feb. 13, 1835.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That if the Superintendent of the Gallatin County Saline, the Commissioner for the sale of the Saline Reserve lands, or the Receiver of the Vermilion Saline Reserve lands, or either of them, shall fail or neglect for two months after the passage of this act, to settle their respective accounts with the Auditor of public accounts, it shall be the duty of the said Auditor to commence a suit or suits against them, or either of them, without delay; which suit or suits shall not be delayed or continued, except by affidavit or by the rules and proceedings of the court where the same may be instituted.*

Said superintendent authorized to settle with the auditor within two months.

SEC. 2. *It shall be the duty of the Auditor aforesaid, to cause a suit to be commenced against any former Commissioner for the sale of the Gallatin Saline lands, or Receiver of the Vermilion Saline lands, for any balance that may remain due and unpaid for two months after the passage of this act, which said suit or suits shall not be delayed or continued, except upon affidavit or by the rules and proceedings of the court where the same may be instituted.*

Suit to be brought against any former commissioner in arrears.

SEC. 3. *Should a recovery be had by the said Auditor, on behalf of the state, it shall be a part of the judgment of the court,*

In case of a recovery.

that the said Auditor, on behalf of the state, shall recover, in addition to the amount due, and interest thereon, ten per centum by way of damages, and all costs.

APPROVED, Feb. 13, 1835.

*In force
Feb. 11,
1835.*

AN ACT to amend an act appropriating a portion of the avails arising from the sale of the Saline Lands, in Gallatin county, to Internal Improvement: approved, February 16, 1831.

*Certain ap-
propriations re-
moved.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the sum of four hundred dollars, appropriated by the act to which this is an amendment, to the county commissioners' court of Wayne county, to be expended, two hundred dollars to build a bridge across Elm river on the mail route from Fairfield to Maysville, and the other two hundred dollars to repair the state road from Fairfield to Albion, be, and the same is hereby appropriated to the improvement of the state road from Fairfield to Leech's mills on the state road from Fairfield to Albion, and if there should be any surplus after making said road a good and sufficient one, the same is to be applied to the improvement of that part of the state road lying between Fairfield and Salem in said county of Wayne.*

*How ap-
plied.*

*Appropriation to
Edwards
county
heretofore
made, re-
moved.*

*How ap-
plied.*

SEC. 2. The sum of one hundred dollars, part of the sum of two hundred and fifty dollars appropriated by the act to which this is an amendment, to the county commissioners' court of Edwards county, to be expended in discharging the debts of said county, be, and the same is hereby appropriated to be expended by the said county commissioners' court of Edwards county, in improving the state road in said county, leading from Albion to Mount Carmel, and one hundred and fifty dollars, the balance of said sum, heretofore appropriated as aforesaid, be, and the same is hereby appropriated to be expended by the county commissioners' court of said Edwards county, for the purposes of internal improvement in said county.

*Appropriations to
Green
county, how
applied.*

SEC. 3. That all appropriations made to the county of Green from the sales of Saline lands, (except three hundred dollars appropriated to build a bridge across Apple creek near Hayden's mill,) shall be subject to the order of the county commissioners' court of said county, and the said county commissioners are hereby authorized to expend the sum of three hundred dollars of the aforesaid appropriations to aid in building a bridge across Macoupin creek at or near Thomas Rattan's mill, and a further sum of three hundred dollars, to be expended in building a bridge at or near Henry Tegarden's mill, across Macoupin creek, and the remainder of said appropriations shall be disposed of in such manner as the county commissioners may think proper. All acts and parts of acts coming within the purview of this act are hereby repealed.

*Acts re-
pealed.*

APPROVED, Feb. 11, 1835.

AN ACT relative to the Receiver of the Vermilion Saline Reserve, and the Commissioner of the Gallatin Saline Lands. *In force Feb. 7, 1835.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the Receiver of the Vermilion Reserve be, and he is hereby authorized and required to pay into the State Treasury, on or before the first Monday in March annually, all moneys then in his hands, and which have come into his hands on account of, or by reason of the sale of the Vermilion Saline Lands.* *Said receiver to pay over moneys into the hands of state treasurer.*

SEC. 2. That the Commissioner of the Gallatin Saline Lands is hereby authorized and required to pay into the State Treasury, on or before the first Monday in March annually, all moneys then in his hands, on account of, or by reason of the sale of the Gallatin Saline Lands: *Provided, That no appropriation, authorized to be paid out or expended in said county of Gallatin, shall be paid into the State Treasury, but the same may be paid over by the said commissioner to any person authorized to receive the same.*

SEC. 3. *Be it further enacted, That the county commissioners' courts of the several counties to which appropriations have been made by an act providing for the sale of the Vermilion Saline Reserve, and appropriating the avails thereof, approved, January 19, 1829; and an act appropriating a portion of the avails arising from the sale of the Saline Lands in Gallatin county to internal improvements, approved, February 16, 1831, be, and they are hereby authorized to draw an order on the Auditor of State for the amount appropriated to their respective counties by the acts above referred to, and it is hereby made the duty of said Auditor, upon the presentation of such order, to issue his warrant upon the Treasurer of State, in favor of the county commissioners' court, drawing such order for the amount appropriated to said county, by either or both the acts above referred to.* *County commissioners of counties to which appropriations have been made, authorized to draw on the auditor for the amount thereof.*

SEC. 4. That the Treasurer of State is hereby authorized and required to pay over to the county commissioners' court of such counties as have had appropriations made to them by said acts above referred to, the amounts so appropriated, in the manner prescribed by said acts, for the Receiver and Commissioner to pay over. All acts and parts of acts coming within the purview of this act, are hereby repealed.

State treasurer to pay over all appropriations made the different counties, to the commissioners thereof. Acts repealed.

This act to be in force from and after its passage.

APPROVED, Feb. 7, 1835.

AN ACT relating to the Gallatin Saline, and the Lands belonging to same. *In force Jan. 16, 1835.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That it shall be the duty of Tyler D. Hewitt, present commissioner of the Gallatin Saline, to* *Commissioner to make a map and how made.*

make out an accurate map of the saline reserve, noting therein, by distinct shades, the amount of lands that have heretofore been directed to be sold, and such as have not been directed to be sold. He shall also note on said map the particular section, or subdivision of a section that contains salt wells that have heretofore been used, or are now used for making salt, at said saline : and he shall, moreover, procure a well bound book, in which he shall enter, in proper order, the lands that may remain the property of the state, after the land is taken out which has been already sold, or directed to be sold ; all which he shall fully certify, with explanatory notes of said map, and a full description of land not directed to be sold.

Procure a book.

Commissioners to lay off saline lots, their duty.

Other lots.

To number and mark the lots.

Lay off and number coal lots.

To be sold.

Lots to remain as common.

Lands subject to sale, and in what manner.

SEC. 2. That John Crenshaw, Leonard White, Lee Hargrave, Joseph H. Hayes, William Hewitt, or a majority of them, be, and they are hereby appointed commissioners, to lay off, and report to said commissioner of the Gallatin Saline, as many lots of land, to be called saline lots, as they may think proper, not less than six, in said salines ; which lots shall include the wells that are now affording salt water, or that are under lease, each well now worked as aforesaid, to be a lot ; and as there are wells not leased or used, as aforesaid, to lay off such other lots, including old wells, or prospects for salt water, as shall make up at least the number of six, as first above mentioned. The commissioners in this section, shall designate in said report, the lots of lands, including the wells, that are now under lease, and those that are not. Said lots of land, so including wells and salt water prospects, as aforesaid, shall not consist of more than forty acres, but may be less, and may be made without regard to the lines of the United States' survey ; in which latter case they shall report a plan and description of such new survey, so made, for the purposes aforesaid. The aforesaid commissioners, after laying off, and properly marking, by courses and distances, and planting permanent stones at the corner, and numbering the lots so as to be distinctly known, shall proceed to select and lay off, a lot of land to each, upon which there is stone coal, for fuel for such saline lots, numbering and describing such coal lot, and setting forth, distinctly to what saline lot it may belong ; which said lots for water and coal, shall be sold, one for water, and one for coal, together. And at the Half Moon lick, (which by this act is contemplated to be divided into four parts,) the said commissioners shall lay off a tract of land around the saline lots, not exceeding six hundred and forty acres, outside of said lots, which shall forever remain as common, for salt making purposes, not more than one eighth of which shall be acquired by any one proprietor of a saline lot, at any one time.

SEC. 3. That all the lands and saline lots mentioned in the foregoing section, shall be subject to sale in the manner, and under the restrictions hereinafter mentioned, that is to say : all those lands not included in any of the existing leases of any part of said saline, and all those saline lots, as mentioned in the preceding section, that are not included in any existing lease, shall be offered at public sale, after advertising the same, with proper description and designation thereof, in at least five public papers, that is to say : one in New York, one in Boston, one in Philadelphia, one in Cincinnati, and two in the state of Illinois, at least eight weeks, com-

mencing at least three months before the day appointed by such advertisement for such sale ; said advertisement shall designate the time and place of such sale. And on the day appointed as aforesaid, the " commissioners of the Gallatin Saline" shall first offer the land so advertised, beginning at the lowest number of township, range and section, and shall sell the same to the highest bidder ; *Provided*, That any such bid shall not be less than fifty cents per acre. And after such sale, as aforesaid, if any of said lands shall remain unsold, the same may be purchased at private entry, at fifty cents per acre. And after said lands shall be offered at public auction, as aforesaid, the said " commissioners of the Gallatin Saline" shall proceed to offer at public auction, the saline lots, including wells, or salt water prospects, to the highest bidder ; *Provided*, That if the said lots, last mentioned, shall not sell at such public auction, they shall in no case be entered at private sale.

Commissioners' duty.

Proviso.

Wells to be sold.

Proviso.

Leases may be surrendered and sold.

Proviso.

SEC. 4. That after the expiration of the year eighteen hundred and forty, the lands now included in any lease, and the wells, or salt water prospects, belonging to any saline lot, as mentioned in the second section of this act, may be sold by the commissioners of the Gallatin Saline, in the manner prescribed in the third section of this act ; or if the said lessees shall, at any time, relinquish their right by lease, to any of the lands included in any of their respective leases, the same may be sold as before prescribed ; or if they, or any of the said lessees, shall surrender to the state their respective leases, of said saline, then the wells, or salt water prospects, on said lease, so surrendered, may be sold as before prescribed, under the same conditions and restrictions ; *Provided*, That nothing herein contained, shall be so construed as to permit the present lessees to use or occupy any of the land included in their respective leases, for any purpose but the manufacture of salt, and all contracts or leases in relation thereto, by said lessees, shall be void, and shall not be enforced by any court or jurisdiction in this state.

SEC. 5. Whenever any of the lands mentioned in the foregoing sections, shall have been sold, as therein specified, it shall be the duty of the commissioner of the Gallatin Saline, to issue his certificate therefor, describing the particular tract or tracts so sold, the price for which the same was sold, and the time and place of selling the same ; and the person holding such certificate, or his assigns, may present the same to the auditor of public accounts, whose duty it shall be, to make out patents for such tract or tracts.

Certificate.

SEC. 6. Twelve thousand dollars, arising from the sale of said land, and saline and coal lots, is hereby appropriated for the erection of a bridge across the Saline creek, at the Island ripple, and improving the navigation of said creek and also the sum of six hundred dollars to the county of Edwards, to be expended by the commissioners in works of internal improvement in said county of Edwards.

Appropriation for bridge over Saline creek, &c. Appropriations to Edwards county.

SEC. 7. That the sum of eight hundred dollars, be and the same is appropriated, on the road leading from Equality to Golconda one half to be expended under the direction of the county commissioners of Pope county, and the other half under the direction of the county commissioners of Gallatin. The further sum of eight

Appropriations for various purposes.

hundred dollars is appropriated to the improvement of the road from Equality to McLeansborough, one half to be expended in each county, under the direction of the county commissioners, respectively. The further sum of five hundred dollars is appropriated to the improvement of the road leading from Equality to Carmi, under the direction of Thomas H. Leaville and John Kensall. And the sum of one thousand dollars is appropriated to the improvement of the road from Equality, across the North Fork, and Cypress creek, to Shawneetown, under the direction of Henry Eddy and John Greshaw. And the further sum of four hundred dollars, to the county court of Franklin, for the purpose of erecting a bridge across the Middle Fork of Muddy, on the road leading from Frankfort to Mount Vernon. And the further sum of four hundred dollars, to the county of Jackson, for the purpose of building a bridge across the Crab Orchard, on the road leading from Frankfort to Brownsville. And the further sum of four hundred dollars to Jackson county, for the purpose of completing the road across the bottom, on the road from Brownsville to the Grand Tower. And the further sum of four hundred dollars, to the county of Washington, to be applied exclusively to the improvement of the roads in said county. And the sum of three hundred dollars, to Franklin county, for building a bridge across Pond creek, in the county of Franklin, on the two roads leading to Phelp's prairies, and Brownsville. The sum of five hundred dollars be, and the same is hereby appropriated to the county of Union, to improve the road from Jonesboro' to the Mississippi river, at Willard's ferry. The sum of five hundred dollars be, and the same is hereby appropriated to the county of Alexander, for the purpose of building a bridge at Unity. To the county of Pope, three hundred dollars, one half on the Petullo bluff, on the road from Vandalia to Golconda, the other half on the Massac bluffs, to be expended, the first under the direction of Williston T. Reed, and the second under the direction of John Witt. The further sum of five hundred dollars, to be appropriated under the order and direction of the county commissioners of Johnson county, within the limits of said county. The further sum of two hundred dollars, to the county of Franklin, to build a bridge across the saline, on the road from Frankfort to Golconda. The further sum of five hundred dollars, to Randolph county, to build a bridge across Mary's river, on the road from Kaskaskia to Liberty. And the further sum of three hundred dollars, to be applied under the direction of the county commissioners' court of Lawrence county, to the improvement of Purgatory, on the Vincennes and St. Louis road. To the county of Edgar, three hundred dollars, to be expended under the direction of the county commissioners' court of said county, for the improvement of the public roads therein. To the county of Jefferson, the sum of four hundred dollars, to be expended under the direction of the county commissioners of said county. To the county of Clay, three hundred dollars, to be applied to the improvement of the Little Wabash bottom. To the county of Perry, four hundred dollars, to be appropriated under the order and direction of the county commissioners of said county; and also to the county of Greene, four hundred dollars; and to the county of Marion, four

Appropriations continued.

hundred dollars; and to the county of Effingham, one hundred and fifty dollars, to be expended under the direction of the county commissioners, in building bridges on the road in said county leading from Maysville to Shelbyville. To the counties of Coles and Clark, three hundred dollars, each, to be expended under the direction of the county commissioners' courts of said counties, for purposes of internal improvement. And there shall be paid to the county commissioners' court of the county of Wabash, the sum of five hundred dollars, to be expended under its direction, one half thereof to be expended in improving the navigation of the Bonpas river, and the residue thereof in improving the state road and mail route, leading from Mount Carmel to Albion. The residue of the money, if any, arising from the sales of said saline lands, shall be paid into the treasury of the state, for the use of the state. Timothy Guard is allowed the pre-emption right to part of the fraction on which his coal furnace and stack now stands, for the purpose of erecting thereon a steam mill, not exceeding four acres, at fifty cents per acre.

Residue to be paid into state treasury. T. Guard.

SEC. 8. The commissioners appointed in the second section of this act, are hereby authorized to lay out and expend the money appropriated for the improvement of the navigation of the Saline, in building locks and dams, upon and across said creek, at such times and places as they may deem proper; and whenever they may believe there is a sufficiency of money to justify them in so doing, may commence said work, either by letting it out in parcels, or the whole, or by employing laborers to work on said improvement; and shall have power to cause the said Saline creek to be made navigable at all times, for boats drawing two feet and a half water, as far as Equality, and to improve the navigation by clearing out rafts, and cut timber out of the way, as high up as McFarland's mill, on said creek.

Commissioners to expend appropriations.

SEC. 9. The commissioner appointed to sell the land and lots in this act mentioned, shall, before he enters upon the duties of his office, enter into bond and security to the people of the state of Illinois, in the sum of twenty thousand dollars, for the faithful performance of his duties as commissioner, as aforesaid; and also take an oath faithfully to perform his duties, as such commissioner; which bond shall be approved of by the county commissioners' court, and filed in the records of said court. And if he fail to enter into such bond, his office shall be deemed vacant, after three months from the passage of this act: and it shall be the duty of the governor to fill such vacancy; and such bond and security shall be required of the commissioner so appointed to fill the vacancy.

Commissioners to give bond.

Shall be sworn.

Vacancy.

SEC. 10. The said commissioner shall, at least once a month, deposit all moneys arising from the sale of any land or lots, in the Bank of Illinois, at Shawneetown; and once in every three months, report to the auditor of public accounts, stating particularly the amount of sales, what is sold, and to whom, and when.

Commissioners to deposit money in bank.

SEC. 11. The commissioners, and others, authorized to lay out and spend the several sums in this act appropriated, are hereby authorized to draw for the same on the bank aforesaid, as the same may be deposited, in the order in which they stand stated

Commissioners to draw for money.

in the sixth and seventh sections of this act ; the county commissioners by a certified order of said court, and the commissioners, by an order signed by a majority of their number ; and in case of a vacancy, in said commissioners, by death, resignation, or otherwise, the remaining commissioners shall have power to fill such vacancy.

Vacancy.

APPROVED, Jan. 16, 1836.

In force Jan. 16, 1837.

AN ACT for the relief of the purchasers of Saline lands.

Persons having paid for lands to T. D. Hewitt and the names entered on books, opposite the tract and certificate issued. Commissioners to issue certificates.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That when any person or persons have paid for any lands in and of the Gallatin Saline reserve, and the same was received by Tyler D. Hewitt, the late commissioner of sales for and on account of any of said lands, and has entered the same upon the books of his said office, and opposite to the description of any such lands, and shall not have issued his certificate to the purchaser ; the commissioner for the time being shall issue his certificate therefor, upon being satisfied that payment has been made therefor, as above described.

Commissioners power and duty to issue certificate or reject application. Fees.

SEC. 2. That to enable the said commissioner more fully to carry out the objects of the preceding section, he shall have power, and it shall be his duty, to notify the administrator of said T. D. Hewitt, of any application for a certificate, and to cause to come before him any witness to swear, and examine the same, and decide upon the proof, and issue the certificate or reject the application, as to him shall seem to be right. And each applicant shall pay to the said commissioner fifty cents for each certificate so by him issued, and also to pay for any other service performed by him in any of said matters, at the same rate as are allowed to justices of the peace : And further, that said commissioner shall make a special report of his doings in the premises as to the amount of land and money and the number of certificates issued by him under this act.

APPROVED, 16th January, 1837.

In force March 3, 1837.

AN ACT to authorize the sureties of the late commissioners of the Gallatin Saline lands, to pay over certain moneys realized, to the counties entitled to receive the same.

Sureties &c. of commissioners of Gallatin saline lands,

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the sureties, executors, or administrators, as the case may be, of the late Tyler D. Hewitt deceased, late commissioner of the Gallatin saline lands, be and they are hereby fully authorized to pay over to the county com-

missioners' courts of the several counties in this State, any and all sums of money appropriated to said counties, and which have been realized for the use of said counties, out of the sales of saline lands by the said commissioner, under the provisions of any former act of the Legislature, and which they may have in their hands, and the receipt of the authorized agent of the said courts respectively, shall be a sufficient voucher to the said sureties, executors, or administrators for the said payment, and the several amounts due to said counties, shall be paid in the order in which they stand in the several acts making the appropriations aforesaid.

may pay to the com. courts. over moneys County commissioners courts or agent to give receipt. Money how paid.

APPROVED, 3d March, 1837.

SALT PETRE CAVES.

AN ACT to provide for Enclosing and Guarding Salt Petre Caves in this State.

In force June 1, 1835.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all persons working salt petre caves in this state, for the purpose of manufacturing of salt petre, shall, previous to commencing the manufacture of salt petre, enclose said cave with a good and lawful fence, and keep the same at all times in good repair, so as to prevent cattle and other stock from gaining access thereto.

Manufacturers of salt petre to inclose caves.

SEC. 2. All persons working salt petre caves in this state, and not first complying with the first section of this act, may be fined in any sum not exceeding fifty dollars, to be recovered before any justice of the peace of the county in which the offence may be committed, upon complaint made by any person, in the name of the county commissioners' court of said county, one half to the person suing therefor, the other to the county commissioners' court of the proper county, and shall also be liable for all damage which individuals may sustain by reason of their stock gaining access to salt petre caves or manufactories.

Penalty for not doing so.

This act to be in force from and after the first day of June next.

APPROVED, Feb. 6, 1835.

SCHOOLS, SCHOOL LANDS, AND SCHOOL FUND.

AN ACT amending the act providing for the establishment of Free Schools, approved, January 15, 1825, and for other purposes.

In force Feb. 17, 1827.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That so much of the act entitled "An act providing for the establishment of free schools," approved, January 15, 1825, as requires that all school districts

Laws repealed.

shall contain not less than fifteen families, be, and the same is hereby repealed.

Settlement in two counties.

SEC. 2. When any settlement shall be partly in one county, and partly in another, it shall be lawful for the inhabitants of such settlements to make an application for a school district to the commissioners' court of both counties; and if such district shall be granted, and a school kept according to the provisions of this act, and the act to which this is an amendment, the treasurer of such district shall draw from the county treasury of each of said counties the proportion of school money due to that part of the school district which shall lie in said county.

Tax how levied.

SEC. 3. The legal voters of any school district, at their regular meetings, shall have power, in their discretion, to cause either the whole or one half of the sum required to support a school in such district, to be raised by taxation. And if only one half be raised by taxation, the remainder may be required to be paid by parents, masters, and guardians, in proportion to the number of pupils which each of them shall send to such school.

No person shall be taxed without his consent.

SEC. 4. No person shall hereafter be taxed for the support of any free school in this state, unless by his or her own free will and consent, first had and obtained, in writing. And any person so agreeing and consenting, shall be taxed in the manner prescribed in the act to which this is an amendment: *Provided*, that no person shall be permitted to send any scholar or scholars to such school, unless such person shall have consented, as above, to be taxed for the support of such school, or by the permission of the trustees of said school: *And provided*, that all persons residing within the limits of a school district shall, at all times, have the privilege of subscribing for the support and establishment of any such school.

Rents of school lands

SEC. 5. The rents and profits of any school lands within the boundaries of any township, are hereby assigned and appropriated under the superintendence of the trustees, to the use and benefit of any school established therein; and if there be more than one school established in such township, then the rents and profits aforesaid shall be divided between them: *Provided*, that if the trustees of said township cannot agree in making a proper division of said rents and profits, then it shall be the duty of the county commissioners' court to make the apportionment thereof. But in either case, a school established under this act, shall only receive so much of the rents and profits of the sixteenth section as shall amount to their equal share, computing the whole number of the inhabitants of the township.

Donations, and duty of treasurer.

SEC. 6. The treasurer of each school district shall receive any donation which may be offered by any person for the support of the school established in such district, either in money or any personal property; and where real estate is donated, the same shall be made to the trustees and their successors, for the benefit of the inhabitants of the school district, and the same shall be applied under the direction of the trustees; and any conveyance of real estate made under the direction of the qualified voters of the school district, specially directed, shall be good and valid; the avails always to be used for the use of such school district. If any treas-

Conveyance of real estate.

urer of a school district shall embezzle or misapply any such donation, or any money which shall come into his hands for the use of the district, he shall forfeit and pay to the trustees of the same, for the use of the district, to be recovered in any court having cognizance thereof, treble the amount of the money or property so embezzled or misapplied. *Misconduct of treasurer.*

SEC. 7. The commissioners of the school fund are hereby authorized to purchase with the school fund now on hand, or which may hereafter come into their hands, state paper and auditor's warrants on the best terms they can, and consolidate the warrants, if necessary, and secure the requisite evidence of claim on the treasury as they shall deem right. The proviso to the second section, all the eighteenth section, and such other parts of the act to which this is an amendment, as are inconsistent with, or repugnant to this act, are hereby repealed. This act shall take effect from its passage. *School fund may be vested in warrants. Acts repealed.*

APPROVED, Feb. 17, 1827.

AN ACT providing for the establishment of Free Schools.

In force Jan. 15, 1825.

To enjoy our rights and liberties, we must understand them; their security and protection ought to be the first object of a free people; and it is a well established fact that no nation has ever continued long in the enjoyment of civil and political freedom, which was not both virtuous and enlightened: and believing that the advancement of literature always has been, and ever will be the means of developing more fully the rights of man, that the mind of every citizen in a republic, is the common property of society, and constitutes the basis of its strength and happiness; it is therefore considered the peculiar duty of a free government, like ours, to encourage and extend the improvement and cultivation of the intellectual energies of the whole: Therefore,

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That there shall be established a common school or schools in each of the counties of this state, which shall be open and free to every class of white citizens between the ages of five and twenty-one years: *Provided*, That persons over the age of twenty-one years, may be admitted into such schools, on such terms as the trustees of the school district may prescribe. *Common schools may be established in each county.*

SEC. 2. *Be it further enacted*, That the county commissioners' courts, shall, from time to time, form school districts in their respective counties, whenever a petition may be presented for that purpose, by a majority of the qualified voters, resident within such contemplated district. *County courts may establish school districts when petitioned for.*

SEC. 3. *Be it further enacted*, That the legal voters in each district to be established as aforesaid, may have a meeting at any time thereafter, by giving ten days previous notice of the time and place of holding the same; at which meeting they may proceed, *Election of officers in school district.*

by ballot, to elect three trustees, one clerk, one treasurer, one assessor, and one collector, who shall, respectively, take an oath of office, faithfully to discharge their respective duties.

Trustees to superintend schools and perform other duties.

SEC. 4. *Be it further enacted,* That it shall be the duty of the trustees to superintend the schools within their respective districts; to examine and employ teachers; to lease all land belonging to the district; to call meetings of the voters whenever they shall deem it expedient, or at any time when requested so to do, by five legal voters, by giving to each one at least five days notice of the time and place of holding the same; appointing one or more persons living within the district to serve the necessary notice; to make an annual report to the county commissioners' court of the proper county, of the number of children living within the bounds of such district, between the ages of five and twenty-one years, and what number of them are actually sent to school, with a certificate of the time a school is actually kept up in the district, with the probable expense of the same.

School district constituted a body corporate, &c.

SEC. 5. *Be it further enacted,* That each and every school district, when established and organized, as aforesaid, shall be, and they are hereby constituted a body politic and corporate, so far as to commence and maintain actions on any agreement made with any person or persons for the non-performance thereof, or for any damage done their school house, or any other property which may belong to or be in possession of such school, and be liable to an action brought and maintained against them for the non-performance of any contract by them made.

Trustees to prosecute and defend suits, &c.

SEC. 6. *Be it further enacted,* That it shall be the duty of the trustees, to prosecute and defend all such suits, in the name of the trustees, for the use of the school district, giving it its proper name; and that it shall be lawful for the said trustees, in the name and for the use of the said district, to purchase or receive, as a donation, and hold, in fee simple, any property, real or personal, for the use of the said school district, and they may prosecute or defend any suit or suits relative to the same: and it shall be the duty of the trustees to give orders on the treasurer of the said district for all sums expended in paying teachers, and all other expense necessarily incurred in establishing, carrying on, and supporting all schools within their respective districts; and at the regular annual meeting of the inhabitants of the district, the said trustees shall, together with the other officer, settle all accounts which shall have accrued during the year for which they were elected.

To give order on their treasurer.

SEC. 7. *Be it further enacted,* That it shall be the duty of the clerk of each district to keep a book, in which he shall make true entries of the votes and proceedings of each meeting of the voters of the district, and of the trustees, which shall be held according to law, and to give attested copies thereof, which shall be legal evidence in all courts in this state.

Clerk of the district to keep a book of record.

SEC. 8. *Be it further enacted,* That it shall be the duty of the treasurer of each school district to receive all moneys belonging to the same, and pay them over for the use of the school to the order of a majority of all the legal voters, by a vote in general meeting, or the order of the trustees; requiring at all times, written

Treasurer to receive and payout moneys.

vouchers for such payments, stating the purpose for which it is made.

SEC. 9. *Be it further enacted,* That it shall be the duty of the collector of each school district, to collect all the moneys belonging to, or due to the same, when directed so to do, and to collect such taxes as by the vote of the district shall be levied, and to pay over all moneys, when collected, to the treasurer of said district, within twenty days after such collection, except five per cent. which he shall retain for his services, taking his receipt for the same.

Collector to collect and pay moneys to the treasurer.

SEC. 10. *Be it further enacted,* That it shall be the duty of the assessor of each school district to assess all such property lying within and belonging to the inhabitants of said district, as he may be directed to assess by a vote of a majority of the voters in such district, and to make return of the same, within thirty days after such assessment, to the trustees of said district.

Duties of the assessor

SEC. 11. *Be it further enacted,* That when any legal voter living within any school district shall be duly elected or appointed, according to the second section of this act, trustee, clerk, treasurer, collector, assessor, or to serve a notice, and shall refuse or neglect to discharge the duties of the same, he shall, if a trustee, be fined in the sum of ten dollars; if a clerk, in the sum of eight dollars; if a treasurer, in the sum of five dollars; if an assessor, in the sum of five dollars; and if a person appointed to serve a notice of any meeting, the sum of five dollars; and for a neglect to settle all of their respective accounts, at the end of the year for which they were elected, the trustees, clerk, collector, and treasurer shall be fined in the sum of twenty dollars; which, together with all other fines imposed in this act, shall be collected by suit, before any justice of the peace within the proper county; and when collected shall be paid over to the treasurer of the district, for the use of the school or schools within the same.

Penalties on officers failing to discharge their duties

SEC. 12. *Be it further enacted,* That the legal voters within any school district, lawfully assembled, shall have the following powers, to wit: To appoint a time and place for holding annual meetings; to select a place within the district to build a school house; to levy a tax, either in cash, or good merchantable produce, at cash price, upon the inhabitants of their respective districts, not exceeding one half per centum, nor amounting to more than ten dollars per annum, on any one person; to do all and every thing necessary to the establishment and support of schools within the same.

Powers of voters when legally assembled.

SEC. 13. *Be it further enacted,* That one of the trustees shall preside at all meetings of the voters, who shall put all questions upon which a vote is to be taken, and when the vote is taken upon levying a tax upon the district, each of the voters present may propose a sum to be levied, and the vote shall be taken on the highest sum proposed first; and, in case of a disagreement, upon the next highest; and so on down, until a majority of all the legal voters within the district, so taxed, shall agree.

One trustee to preside at meetings

SEC. 14. *Be it further enacted,* That it shall be the duty of the trustees, or a majority of them, to furnish the collector with the following warrant to collect such taxes as may be so

levied, which warrant shall be his authority for collecting the same, to wit :

STATE OF ILLINOIS, }
COUNTY, } ss.

Form of
warrant to
collect
taxes.

To A. B., Collector of the School District, in the County aforesaid, GREETING :

In the name of the people of the state of Illinois, you are hereby required and commanded to collect from each of the inhabitants of said school district, the several sums of money, or produce, as the case may be, written opposite their names, in the annexed tax list ; and within sixty days after receiving this warrant, to pay the amount of moneys by you collected into the hands of the treasurer of the aforesaid district, and take his receipt for the same ; and if any one or more of the said inhabitants shall neglect or refuse to pay the same, you are hereby further commanded to levy on the personal goods and chattels of each delinquent, and make sale thereof, according to the law regulating the collection of taxes within this state.

Given under our hands this day of

A. D. 18

The annexed Tax List.

G. H. . . .	\$1,50	A. B. }	Trustees.
I. J. . . .	5,00	C. D. }	
K. L. . . .	3,00	E. F. }	

Form of
tax list.

Commis-
sioners of
the school
fund con-
stituted.

SEC. 19. *Be it further enacted*, That the auditor and secretary of state, under the direction of the governor, are hereby declared and constituted commissioners of the school fund ; and the said fund now on deposit in the state bank, together with all such moneys as shall be and accrue to this state, for the use of schools and a seminary of learning, by virtue of any act of congress, shall be, and the same are hereby vested in said commissioners, to be by them applied in such manner for the use of schools and a seminary of learning, as shall be prescribed by law, and the said commissioners, or a major part of them, are hereby authorized to receive and give acquittances for all such sums of money as this state is, or shall be, entitled to receive from the treasury of the United States.

Commis-
sioners to
purchase
bank notes,
&c.

SEC. 20. *Be it further enacted*, That it shall be the duty of the cashier of the state bank, to pay to the order of the said commissioners, or a majority of them, the amount of the school fund, on deposit in said bank ; and the said commissioners shall, forthwith, proceed to buy up therewith as large an amount of the bank notes of said bank as the same will purchase ; and the notes so purchased shall be by the said commissioners deposited in said bank, and the cashier shall give to the said commissioners a receipt therefor, and proceed to burn the same, in the manner and at the time prescribed for burning the ten per cent. paid into said bank ; which receipt the said commissioners shall present to the auditor of public accounts, who shall issue a certificate for the amount specified in said receipt, payable to the aforesaid commissioners of the school fund,

in the legal currency of the United States, which certificate shall be by said commissioners safely kept as an evidence of the claim of the commissioners upon the treasury of the state.

SEC. 21. *Be it further enacted*, That it shall be the duty of the clerk of the county commissioners' court of the several counties in this state, to make an abstract of the report of the trustees of the schools established, stating the number of children within each district, the number actually sent to school, the time a school has been kept in operation in each district, with an account of the expense of the same, and forward it to the secretary of state, on the first day of December, in each and every year.

SEC. 22. *Be it further enacted*, That it shall be the duty of the inhabitants of any district, at their regular or called meetings, to make such regulations for building or repairing school houses as they may think necessary, and for furnishing the school house with firewood and furniture ; they shall have power to class themselves, and agree upon the number of days each person or class shall work in making such improvements, and all other regulations that they may think necessary to accomplish such building or improvement : *Provided, however*, That no person shall be required to do any work, or pay for such improvements or wood, unless they have the care of a child between the age of five and twenty-one years, or unless he shall attend the school for the purpose of obtaining instruction ; and for any neglect or refusal to do such work, by any one of the inhabitants, according to this act, there shall be a fine for each day they shall so neglect or refuse to work of seventy-five cents.

SEC. 23. *Be it further enacted*, That the several school collectors and treasurers who may be appointed under the provisions of this act, shall, before they enter upon the discharge of the duties of their respective offices, enter into bond and security, in the sum of two hundred dollars to the county commissioners of the county in which they reside, and their successors in office, conditioned for the faithful accounting for all moneys received by them, respectively, under and by virtue of any authority conferred on them by this act.

SEC. 24. *Be it further enacted*, That whenever the tax is levied, according to the twelfth section of this act, in good merchantable produce, it shall be lawful for the trustees to make out a list, with a warrant, stating to be collected in produce ; and they shall have power to transfer the list and warrant to any teacher or teachers that they may have employed, who shall have full power to collect the same ; and if any person shall refuse or neglect to pay their respective amounts, in produce, for two weeks after demanded, it shall be lawful to collect the same in cash : *Provided*, That whenever there is any disagreement about the price of any produce offered in payment, it shall be the duty of each to select one disinterested house-keeper, to value the same, and if they cannot agree it shall be their duty to choose a third, and all such valuation shall be binding.

APPROVED, Jan. 15, 1825.

*In force
May 1,
1833.*

AN ACT to provide for the application of the Interest of the Fund arising from the sale of the School Lands belonging to the several townships in this state.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That every school commissioner who shall, on the second Monday of November next, have in his possession any amount of the interest derived from the proceeds of the sales of the school lands, of any township within his county, if such interest shall not be wanted to pay the expenses incident to the survey and sale of the school lands of such township, and the management of the funds arising therefrom, shall, on that day, or within one week thereafter, proceed to apportion the same among the teachers, who, by the provisions of this act, shall be entitled to the same.

Duty of school commissioners in relation to the interest derived from the sales of school lands.

Teachers when entitled to their portion of said interest.

Employers of teachers when to meet.

Notice.

Shall appoint trustees.

Duties of said trustees.

Term of service.

Teacher shall make a schedule of the names of his scholars

SEC. 2. No teacher shall be entitled to receive any portion of said interest, unless his school shall be conducted, and his returns made in conformity to the provisions of this act.

SEC. 3. On the first Saturday in May next, or if the school shall commence after that time, then at some time within one month after the commencement of the school, a meeting of the employers of the teachers shall be held, of which meeting the teachers shall give three days previous notice, to each of his employers, who are not absent from the neighborhood, at which meeting such employers shall proceed to appoint three persons as trustees of said school; said trustees shall be authorized, and it shall be their duty to visit the school from time to time, and to require the admission into the school, and the gratuitous tuition of such children residing in the vicinity of the school as shall be presented to said trustees for that purpose, if such trustees shall believe that the parents or guardians of such children are unable to pay for their tuition. It shall also be the duty of said trustees to receive and apply to the use of the school, any donation of money, books, maps, globes, stationery, or other articles necessary or useful for schools.

The term of service of such trustees shall expire on the second Monday of November annually, when a new appointment shall be made in the manner provided in this section; and all vacancies in said office shall be filled in the same manner.

SEC. 4. The teacher shall make a schedule of the names of all scholars attending his school, who reside within the township to which the school fund belongs, from the interest of which he wishes to obtain a part of his compensation; and on every day on which a school shall be kept by him, he shall set down under the proper date, and opposite the name of each scholar, the attendance or absence of such scholar. Immediately after the close of the month of October, or sooner, if his school shall have come to a close, said teacher shall add together the number of days which each scholar residing in the proper township shall have attended his school, and set down the total number of days opposite the name of such scholar, he shall then add together their several amounts, and set down the total number at the bottom of the schedule; and this total number, after the schedule shall have been examined; and

if necessary, corrected by the school commissioner, shall be the criterion by which he shall be governed in making the apportionment aforesaid; but no such schedule shall be taken into consideration unless it shall be accompanied by a certificate from a majority of the trustees of the school, or from five of the employers of said teacher, setting forth that they verily believe said schedule to be correct, and that said teacher has, to the best of their knowledge and belief, given gratuitous instruction in his said school, to all such orphans and children of indigent parents residing in the vicinity, as had been presented for that purpose by the trustees of said school. If any school shall contain scholars residing in two or more different townships, each possessing a productive school fund derived from their school lands, the teacher of the school in order to become entitled to a share of the interest of each of said township school funds, shall make separate schedules of the names of his scholars residing in each of said townships, and make return thereof to the school commissioner of the county in which such township, or the larger part thereof, shall be situated. In making the apportionment authorized by the foregoing part of this act, no services of any teacher shall be taken into consideration, except such as shall have been rendered between the last day of April and the first day of November of the present year.

SEC. 5. On the second Monday of November, in the year one thousand eight hundred and thirty-four, or within one week thereafter, and at the same time in each succeeding year, each school commissioner shall proceed to apportion the interest derived from each township school fund in his county, among the several teachers entitled to the same. In all cases where such interest is not required to pay the expenses incident to the survey and sale of the school lands, and the management of the fund, such apportionment of interest shall be made among the several teachers entitled to it, according to the number of their scholars residing in the township possessed of such school fund, and the number of days each of said scholars shall have been instructed by such teacher, within the twelve months immediately preceding the month in which such apportionment is hereby required to be made, to be ascertained in the mode pointed out in the fourth section of this act.

SEC. 6. As soon as the apportionment of moneys provided for by this act shall have been made, the school commissioner shall pay to each of the teachers, on his demanding the same, the share to which he shall be found entitled, taking his receipt for the same, and charge the same to the school fund of the proper township.

SEC. 7. As a compensation for apportioning and paying out money as directed by this act, the school commissioner shall be entitled to retain two and a half per centum on all sums thus apportioned by him.

SEC. 8. The trustees, employers, who shall certify to the correctness of the schedule of the teacher, shall also certify the whole amount due to such teacher, and the commissioner, if that amount be due and coming to his share, shall pay the same; and the employers, should there be a balance due said teacher, shall pay the same in such manner as they shall agree.

SEC. 9. All moneys now in the hands of trustees of school

Commissioner to apportion the interest of the school fund in his county among the several teachers entitled thereto.

Shall pay the same to said teachers.

Compensation.

Trustees shall certify the amount due the teacher.

All money in the hands of trustees or others shall be paid over to the commissioner.

lands, in any township, or in the hands of other individuals, loaned out, or otherwise, shall be paid over to the commissioner appointed by the county commissioners' court to sell school lands, and it is hereby made his duty to call them to account for all moneys, and on failure, to sell and collect the same of the said trustees, or others, so that all the funds which have accrued, and which have not been lawfully and fairly expended, belonging to each and every township, and all rents or moneys which, from year to year, or time to time, shall hereafter arise, over and above the allowances for services to trustees, and incidental expenses, shall be promptly paid over to said commissioner, who shall give them proper vouchers or receipts for the same; and all notes, mortgages, and claims assigned over, shall be by him, in his name, for the use of the inhabitants of the township, sued for and collected. Any trustee, or other township officer, who shall have money in his possession belonging to the township, and shall not, on demand, pay the same over, shall, from that time on until the same shall be collected, pay an interest thereon, at the rate of twelve per cent. per annum.

Inhabitants of any township, associating themselves for the purpose of erecting a school house, may borrow from the commissioner the money belonging to said township.

SEC. 10. Whenever there shall be in the hands of any school commissioner, any moneys received by him in payment for school lands or rents, belonging to any township in this state, it shall be lawful for any number of the citizens of said township, not less than five, (three of whom at least being freeholders of the township,) who shall associate themselves together for the purpose of erecting a school house in said township, to borrow on personal security, and at an interest of six per cent. per annum, payable yearly, any portion of such moneys, not exceeding two hundred dollars, to any one association of persons: *Provided*, That such borrowers shall bind themselves to erect a good brick, stone, or frame school house in such township, within one year from the time of receiving the loan, and after the first year to cause a school to be kept in said school house, at least three months in each calendar year, until the said loan shall be repaid; and to repay said loan with the interest, and with a penalty of twenty-five per cent. upon the amount of said loan, if they shall fail to erect such school house within the period aforesaid, or if they shall not cause a school to be kept therein, for at least three months in each calendar year thereafter. Said loan may be made for two years, and may be renewed every second year until the expiration of ten years from the commencement of the loan, when the same shall be repaid. The school commissioner may at any time require additional security, and on failure to furnish the same to the satisfaction of said commissioner, he may proceed to collect the principal and interest of the loan.

Amended: See act of Feb 7, 1835.

Secs. 1 & 2.

Law requiring the lands to be valued by the trustees repealed.

SEC. 11. So much of the law now in force as requires that school lands shall be by the trustees valued and appraised, and that the school lands shall be sold during the setting of the circuit court of the county, or when the court should be in session, be, and the same is hereby repealed; and the lands shall be advertised for the length of time now required, and shall be sold at the court house, or place of holding courts, for the highest and best price that can be had, without any regard to valuation: *Provided*,

That the same shall bring one dollar and twenty-five cents per acre; if the same will not bring that sum, there shall be no sale.

SEC. 12. The eleventh section of the act, approved, February 17, 1827, entitled "An act relating to the school lands," and all other acts and parts of acts coming within the purview of this act, are hereby repealed. *Acts repealed.*

This act shall be in force from and after the last day of April next.

APPROVED, March 1, 1833.

AN ACT authorizing a credit on sales of School Lands.

In force, June 1, 1833.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That whenever the inhabitants of a township, petitioning for the sale of the sixteenth section, shall be of opinion that their interest would be promoted by selling said section on a credit, they may represent the same in their petition; whereupon, it shall be the duty of the commissioner to sell said lands on a credit of one, two, and three years, the purchaser giving a mortgage on the land, and good personal security for the payment of the purchase money, to be approved of by the county commissioners' courts respectively. This act to take effect from and after the first day of June next. *School lands may be sold on a credit. Purchaser shall give mortgage and personal security.*

APPROVED, Jan. 12, 1833.

AN ACT confirming certain leases of School Lands.

In force Feb. 22, 1833.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That all leases of sections, or parts of sections, numbered sixteen, in the several townships of this state, and set apart for school purposes, executed under the "Act relating to school lands," approved February 17, 1827, prior to the first day of July, 1831, shall be, and they are hereby confirmed to the lessees therein, and shall be deemed and taken as conferring and granting to them all the rights and privileges stipulated in said leases, in conformity with the said act, any other law or parts of laws to the contrary notwithstanding. *Leases confirmed.*

APPROVED, February 13, 1833.

In force
Feb. 13,
1833.

AN ACT concerning the School Fund.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the commissioners of the school fund be, and they are hereby required, to draw for, and receive the whole amount of the school fund belonging to this state, and now deposited in the branch of the United States' bank, at St. Louis, and deposit the same forthwith in the treasury of this state.

SEC. 2. The treasurer is hereby required to receive the said money, and give a receipt for the same ; and the said school fund shall be applied for the payment of any demands that may be against the treasury, in the same manner as funds derived from the ordinary sources of revenue ; and so long as said fund is thus used, it shall be entitled to receive from the state an interest at the rate of six per cent. per annum.

APPROVED, February 13, 1833.

SEMINARY LANDS.

In force
Feb. 6,
1835

AN ACT to repeal so much of the law as grants pre-emption rights to settlers on Seminary Lands.

Part of
act re-
pealed.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the third section of the act, entitled "An act to provide for the sale of the Seminary Lands," approved, February 15th, 1831, be, and the same is hereby repealed : *Provided,* That rights acquired under the provisions of the above mentioned act, shall not be affected by the passage of this act.

APPROVED, Feb. 6, 1835.

Proviso.

SCHOOLS, COLLEGE, AND SEMINARY FUNDS.

In force
Feb. 7,
1835.

AN ACT to provide for the distribution and application of the interest on the School, College and Seminary Funds.

Commis-
sioners to
provide ac-
count
books.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the commissioners of the school fund are hereby required to provide a well bound book, in which they shall keep the accounts of the school, college and seminary funds—the accounts shall be kept separately, in the manner following : The commissioners shall charge themselves with the amount of each sum received, on the date of receiving

Accounts
how kept.

the same, and credit themselves with each sum paid and loaned out, showing the date of each payment or loan ; they shall charge the state with the state paper and auditor's warrants purchased, showing the date and amount of each purchase, and shall charge the interest on the said state paper and auditor's warrants, at the rate of two per cent. per annum from the date of purchase to the fifteenth of February, one thousand eight hundred and thirty-one, and on that day add the interest to the principal, and then charge interest on the sum produced by such addition at the rate of six per cent. per annum for one year ; and at the end of every year thereafter, the interest shall be added to the principal, and bear interest at the rate aforesaid the succeeding year ; they shall in like manner charge the state with each sum loaned, showing the date and amount of each loan, and charge interest on such loan or loans, at the rate of six per cent. per annum for one year, and at the end of every year the interest shall be added to the principal, and bear interest at the rate aforesaid. The accounts shall be continued in manner aforesaid to the last day of December in the year one thousand eight hundred and thirty-three, and on that day the interest shall be added to the principal of each sum, and the sums produced by such addition, are hereby declared to be principal ; and the interest shall thereafter be charged upon the said principal in manner aforesaid, until the state shall refund the same ; and no part of said principal shall be paid out as interest, nor unless expressly authorized by law ; nor shall any law providing for the appropriation of interest on either of said funds, be so construed as to apply to interest accruing previous to the said last day of December, one thousand eight hundred and thirty-three.

SEC. 2. The commissioners of the school fund of the state, shall annually loan to the school fund the interest of the college and seminary funds, to be added to the interest of the school and township funds, for distribution among the several schools in the State established under this law.

*Interest on
college and
seminary
funds to be
loaned to
the school
fund an-
nually.*

SEC. 3. The commissioners of the school fund of the state, are hereby required to distribute and pay out the interest which may have accrued on the said school, college and seminary funds, on the first Monday of January, in the year one thousand eight hundred and thirty-six, and on the first Monday in January annually thereafter, for the encouragement of learning, in the manner and upon the terms and conditions hereinafter provided.

*Said inter-
est to be
annually
distributed
to the sever-
al counties.*

SEC. 4. The commissioners of the school fund shall ascertain from the returns of the census to be taken in the year one thousand eight hundred and thirty-five, the number of white persons in each county under twenty years of age, and also the amount of interest due the several funds aforesaid, on the first day of January, one thousand eight hundred and thirty-six, and apportion the interest among the several counties in proportion to the number of persons under the age aforesaid, and certify the amount due to each county, to the auditor, whose duty it shall be to issue a warrant on the treasurer in favor of each school commissioner for the amount due to his county, and the interest shall be apportioned annually thereafter and distributed as aforesaid, until the next census shall have been taken, and on the first day of January in every year next af-

*And in pro-
portion to
the number
of inhabi-
tants in
each under
twenty
years of
age.*

ter the taking of the census of the state, the said commissioners shall make a new apportionment of interest, and cause the same to be distributed in the manner and upon the terms aforesaid.

To be paid to the teachers of schools.

SEC. 5. It shall be the duty of the school commissioners of counties to receive from the treasurer the amount of any and all warrants which may be drawn in manner and for the purposes aforesaid, and to distribute the same among the teachers of schools, who may have kept schools in conformity with the provisions of the act entitled "An act to provide for the application of the interest of the fund arising from the sale of school lands belonging to the several townships in this state, approved first of March, 1833:" *Provided*, That no teacher shall be entitled to receive more than one half of the amount due him for services rendered within the twelve months preceding the first of November previous to the time of making such distribution; and if the interest in the hands of a school commissioner in any county, shall, at the time of distribution, amount to more than enough to pay one half of the amount due the teachers in his county, then the overplus shall be set apart as a county fund, and shall never thereafter be subject to distribution, but shall forever remain as a principal fund, to be denominated "The County School Fund," to be loaned out by the school commissioner of the county as township funds; and the interest accruing thereon, shall be subject to distribution for the support of schools in the county, in the same manner and under the like regulations as is or may be prescribed for the distribution of the interest on the state fund: *Provided*, That in making the distribution of the state fund for the present year, no teacher shall be paid for any service rendered before the first day of June next.

Proviso.

In case the interest should amount to more than enough to pay half the amount due teachers, how disposed of.

SEC. 6. No part of any township fund shall be made to constitute any part of a county fund; and teachers employed in townships having no productive fund, who keep schedules and make returns as is required in townships having productive funds, shall be entitled to a distributive share of the state fund, and the township funds shall be paid to teachers at the time now required by law.

Township funds to be separate from county funds.

APPROVED, Feb. 7, 1835.

In force Feb. 6, 1836.

AN ACT concerning the School Fund.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the commissioners of the School Fund be, and they are hereby required to receive the whole amount of the School Fund belonging to this State, and now deposited in the Branch Bank of the United States at St. Louis, and deposite the same in the Treasury of the State; and the Treasurer is hereby required to receive said money, and receipt for the same; and the said money, when so received, shall be applied to the payment of demands against the Treasury, in the same manner as money derived from the ordinary sources of revenue, and the State shall be chargeable with the interest on the same, at

Commissioners of said fund authorized to remove the same from U. S. Bank into State Treasury.

How applied.

the rate of six per cent. per annum, the interest to be added to the principal annually: *Provided*, That if any law shall be passed at the present session of the General Assembly to distribute the interest or principal of said fund, the Treasurer shall, on the warrant of the Auditor, pay over to the said School Commissioner the amount so loaned to the State, out of any money in the Treasury not otherwise appropriated, to be distributed according to law. This act to take effect from its passage.

State to pay interest on the same at six per cent. Proviso.

APPROVED, Feb 6, 1835.

AN ACT to amend an act, entitled "An act to provide for the application of the interest of the fund arising from the sale of the School Lands belonging to the several townships in this State," approved, March 1, 1833.

In force Feb. 7, 1835.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That the tenth section of the act to which this is an amendment, and so much of said act as provides for gratuitous instruction, be, and the same are hereby repealed.

Parts of said act repealed.

SEC. 2. That the eleventh section of the said act, so far as it dispenses with a valuation of the sixteenth sections in the several townships, is hereby repealed; and the law requiring a valuation by trustees, is hereby revived.

Act repealed.

SEC. 3. That the trustees of school lands, or a majority of them, shall have power to lease any of said lands, from year to year, upon terms most conducive to the interest of the township.

Trustees may lease school lands

SEC. 4. The trustees shall pay over to the School Commissioner all rents which they collect on leases as aforesaid.

Shall pay over rents to school commissioner.

SEC. 5. If any lessee or lessees, his, her or their heirs or assigns, or any other person or persons, shall cut down or destroy any more wood or timber than may be necessary for the improvement and cultivation of the lot so leased, or shall do any damage to the said leased premises, or commit any waste thereon, every such lessee or lessees, or other persons, shall be liable to said trustees in an action for damages, commenced in the name of said trustees, and the said lessees shall moreover, upon conviction thereof, forfeit such lease.

In case of lessee committing waste on said lands.

SEC. 6. In all cases of a failure or refusal to pay the rent due and owing on any land leased under the provisions of this act, whenever the same shall become due, it shall and may be lawful for the trustees in their respective townships, to sue out a distress warrant, which shall be returned to the justice issuing the same, and the same proceedings shall be had thereon as in other cases of distress for rent.

Failing to pay rent.

SEC. 7. Any number of inhabitants of any township may associate themselves together, and purchase a quantity of land not exceeding ten acres, and procure a conveyance of the same, to be made to the trustees of school lands in the township, by their cor-

Inhabitants of townships may associate themselves to-

gether for
school pur-
poses.

porate name, and erect thereon a school house, and make such other buildings and improvements thereon as they may deem necessary for the encouragement of learning and science generally, and such land and improvements shall be held by the said corporation for the use of the persons associating themselves together as aforesaid, and their successors and assigns forever; and shall not be applied to any other purpose, nor in any other manner than shall or may be directed by the persons associated as aforesaid.

APPROVED, Feb. 7, 1835.

In force
Feb. 12,
1835.

AN ACT providing for the security of School Funds.

Form of
mortgage.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That mortgages to be taken by school commissioners and agents for the inhabitants of counties, may be in the following form: I, A. B., of the county of _____, and State of _____, do assign over and transfer to E. F., school commissioner and agent for the inhabitants of the county of _____, for the use of the inhabitants of township _____, range _____, (or of the county,) the following described real estate, (here describe the estate,) which real estate I declare to be in mortgage for the payment of _____ dollars this day loaned to me by the said school commissioner, with _____ per cent. interest per annum thereon until paid; and I hereby covenant that the title to said real estate is free from all encumbrance, that I will pay all taxes and assessments which may be levied upon said estate; and I further agree that if I do not pay the interest on said sum annually, and the principal when due, that the said real estate may be sold by the said commissioner in conformity with the laws of the State, and that I will deliver immediate possession to the purchaser. Witness my hand and seal, this _____ day of _____, 18____, which mortgage shall be accompanied with a note for the amount loaned, and shall be valid to all intents and purposes.

Failure to
pay interest

Failure to
pay princi-
pal.

SEC. 2. If any person shall make default in the payment of interest as it becomes due and payable, such interest shall thereafter be considered principal, and interest at the rate of twenty per cent. per annum shall be chargeable and recoverable thereon; and if any person shall fail to pay the principal sum borrowed at the time the same becomes due and payable, such person shall be chargeable with interest on such principal sum at the rate of twenty per cent. per annum until paid; and the school commissioners of counties shall be authorized to recover the penalties aforesaid, in an action or suit on the note or mortgage given for the payment thereof.

Where ad-
ditional
security is
required
and not
given.

SEC. 3. In all cases, where the school commissioner of any county shall require additional security from any person for the payment of money loaned, and such security shall not be given, the commissioner may sue for and recover the amount loaned such person, upon making proof of such requisition, together

with the interest which may have accrued at the time of obtaining judgment.

SEC. 4. In the payment of debts by executors or administrators, debts due to the school fund of the State, or any county, or township, shall have a preference over all other debts, except funeral and other expenses attending the last sickness, not including the physician's bill.

*Debts due
the school
fund by
executors
shall have
preference
over all
others, ex-
cept funer-
al expenses.
School com-
missioners
shall give
bond annu-
ally.*

SEC. 5. The county commissioners' courts of the several counties, shall require of the school commissioner and agent for the inhabitants of such counties, to execute a new bond at the next June term of their respective courts, and to execute a new bond annually thereafter; and if any commissioner as aforesaid, shall fail to execute such new bond, the court shall thereupon remove such commissioner from office, and appoint a successor: *Provided,* That the court may allow further time to such commissioner to execute such bond, if in the opinion of the court, such further time may be allowed without injury to the school funds in the hands of such commissioner.

Provido.

SEC. 6. All record books required to be kept by school commissioners, shall be paid for out of the County Treasuries of the counties in which such books shall be used.

*Record
books, how
paid for.*

SEC. 7. That the county commissioners' courts of the several counties in this State, shall be authorized, when they may deem it expedient, to require of their school commissioner additional security for the money he may have received from the sales of school land; and on any school commissioner refusing or failing to enter into additional security that may be satisfactory to such court, his office shall be treated as vacant and filled accordingly; and for good cause, to be entered on the record of the county commissioners' court, the commissioners of such county may remove their school commissioner from office.

*County
commis-
sioners may
require
school com-
missioner
to give ad-
ditional
security.
Failure to
do so.*

SEC. 8. The inhabitants of any township in this State that may have kept a schedule for the year 1834, according to the provisions of an act providing for the application of the interest of the money arising from the sales of school lands, and who have not made return thereof to the school commissioner according to law, shall be authorized to make out their schedule, and return the same to the school commissioner of such county, and such school commissioner shall be authorized to pay over such interest as may be due such township for the year 1834, as though the schedule had been returned according to law. This act to be in force from and after its passage.

*Inhabitants
of town-
ships who
have not
returned
schedules
authorized
to do so*

APPROVED, Feb. 12, 1835.

In force
Jan. 15,
1836.

AN ACT to amend an act entitled "an act to provide for the distribution and application of the interest on the School, College and Seminary funds."

Com-
missioners to
receive
monies
from the
U. States.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the commissioners of the school fund to receive from the United States, as the same may become due and payable all monies, to which this state is or may be entitled under the provisions of any law of the United States, appropriating any portion of the proceeds of the sales of public lands within this state for purposes of education and to deposite the same in the state treasury to be used by the state for revenue purposes; and the state shall be charged with the same, and with interest as required by the act to which this is an amendment.

SEC. 2. It shall be the duty of school commissioners of counties, in loaning the township and county funds to require payment of the interest half yearly and in advance; and it shall also be their duty to loan all interest, in the same manner as principal, which they may receive, until the same is demanded for the use of schools.

Funds to
be distrib-
uted.

SEC. 3. Hereafter the interest on township and county funds shall be distributed, and paid to teachers on the second Mondays in January, and second Mondays in July in each and every year; and it shall be the duty of teachers to present their schedules, made and certified as now required by law, on the first Mondays in January and first Mondays in July in each and every year; such schedule not to extend further back than six months, and it shall be lawful for teachers, who returned schedules on the first Monday in November one thousand eight hundred and thirty-five, and who continued to teach school to the first of January one thousand eight hundred and thirty-six, to continue their schedules to the first of January one thousand eight hundred and thirty-six and to return the same at the time required by this act, and such teacher shall be entitled to a distributive share of the interest of the state fund for services rendered between the first of June one thousand eight hundred and thirty-five and first of January one thousand eight hundred and thirty-six.

Teachers to
present
schedules.

SEC. 4. The money received by the school commissioners, from the state, shall be paid out to the teachers of schools as required by the act to which this is an amendment, on the second Monday in January annually, or as soon thereafter as the money shall be received in the counties, and such payments shall be made for services, rendered during the preceding year; *Provided*, in all cases when a schedule has been regularly kept in any district or districts according to the act to which this is an amendment, and the teacher has been paid by the inhabitants of said district, the trustees upon presenting a proper schedule, well certified, shall be authorized to draw their distributive proportion of the school funds for the use of said inhabitants, as the teachers would have been entitled to.

Proviso.

SEC. 5. It shall be the duty of the secretary of state to cause

this act to be immediately published in the newspaper printed by the printer of the state. This act to be in force from its passage. *Act to be published.*

APPROVED, Jan. 15, 1836.

AN ACT to amend the several acts in relation to common schools.

In force
March 4,
1837.

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That all moneys which may be received into the State Treasury under the provisions of any act of Congress, directing or authorizing any part of the revenue of the United States to be deposited in the State Treasury, except that which has been appropriated to purposes of internal improvement, shall be added to and form part of the Common School Fund of the State, and shall be loaned to the State on the same terms upon which the Seminary and School Funds have heretofore been loaned. *Moneys to be added to school fund*

SEC. 2. Hereafter the interest accruing upon the School, College and Seminary funds shall be distributed among the several counties in the State as heretofore required by law. *To be distributed.*

SEC. 3. The money which may be received from the United States as aforesaid, shall be deposited by the State Treasurer in the State Bank of Illinois, and Bank of Illinois in equal amounts, in proportion to the amount of stock paid into each bank, subject to such disposition as may be made of the same by the General Assembly. *To be deposited.*

SEC. 4. For the purpose of carrying into effect the foregoing provisions of this act, and to establish a system of common schools throughout the State, it shall be the duties of the trustees of school lands in every township in the State, to notify the inhabitants of their respective townships, to meet at a time to be appointed by said trustees, at some convenient place in the said townships, and to vote for or against becoming incorporated as hereinafter provided, for the purpose of establishing and supporting common schools; the notice shall be given by posting up at least six advertisements at six of the most public places in the township, at least twenty days before the day of election; and if there be a newspaper published in the township, the notice shall also be published in such newspaper for the length of time aforesaid. When the election is held, two of the trustees shall act as judges, and one as clerk of the same; and all persons residing in the township, who, at the time of election, may be eligible to vote for representative of the General Assembly, shall be permitted to vote; the vote shall be taken "viva voce;" each voter shall vote for or against being incorporated; and if it shall appear that two thirds of the votes taken are in favor of being incorporated, the said trustees shall immediately on the same day, or within ten days thereafter, open one or more poll books, and cause an election to be held for five trustees, residents and freeholders within the township, who shall be styled "Trustees of Schools," in said township, to superintend the business and af-

Trustees to
give notice.

Time of
notice be-
fore elec-
tion.

Trustees to
act as
judges.

To open
poll books
and cause
an election
to be held.

fairs of the township in relation to education and schools generally, and they shall be the successors of the former trustees of school lands in the township.

Trustees to have perpetual succession.

SEC. 5. "Trustees of Schools" in townships shall have perpetual succession, and by their corporate name have the right to sue and be sued, plead and be impleaded, answer and be answered unto, in all courts and places where judicial proceeding is or may be had or allowed; and upon the election of trustees as aforesaid, the inhabitants of townships shall be deemed and considered for all the purposes and objects mentioned in this act, incorporated by the name and style of "Trustees of Schools," in the township and range according to the numbers thereof, and the said corporation shall have perpetual succession.

To deliver books and issue a certificate of election.

SEC. 6. The trustees of townships shall immediately after any election of trustees as aforesaid, deliver the poll books of both elections to the school commissioners of their respective counties, with a certificate signed by them, or a majority of them, of the election of trustees; said poll book and certificate to be filed and preserved by the school commissioners.

When elections to be held.

SEC. 7. The elections provided for in the fourth section of this act may be holden at any time after the first Monday of July next, and the trustees elected shall continue to be trustees for the term of two years, and until others are elected; and an election shall be held biennially in any township for trustees of schools in said townships; the place of election and the mode of conducting the same shall be fixed by the trustees. Trustees of schools in townships shall have a general superintendence over all schools kept in the township, they shall have power, under the rules and regulations herein prescribed, to lay off their townships in school districts; to call meetings of the voters of the township for the purpose of considering of, and devising ways and means for promoting the cause of education in their township; to make contracts for building school houses; to employ teachers when necessary; to adopt by-laws, regulating the mode of conducting schools, and defining and regulating the duties of all officers of the corporation; to purchase libraries for the use of schools in their townships; and to provide for the protection and safe-keeping of all funds and property of the township.

To have superintendence of schools, lay off districts, &c.

SEC. 8. The said trustees shall keep a journal of their proceedings, and cause a record to be made and kept of all their acts as trustees; they shall hold meetings quarterly, or oftener if necessary; they shall appoint a treasurer who shall perform the duties of secretary, and keep the journal and record of their proceedings; he shall also receive and pay out all money of the township, give all notices of public meetings, act as clerk of such meetings, loan the funds of the township, collect all moneys due the township, and pay teachers under the directions of the trustees, and shall continue to be treasurer during the time for which the trustees making the appointment were elected.

To keep a journal of their proceedings, appoint officers, &c.

Treasurer to give bond.

SEC. 9. Every treasurer, appointed as aforesaid, shall, before entering upon the duties of treasurer, execute a bond with two or more freeholders as security in a penalty sufficient to cover all moneys, which he may receive for the use of the township, conditioned as follows:—"The condition of this bond is such, that, if

Condition of bond.

the above bound A. B. shall well and truly perform all the duties now, or which may at any time hereafter be required of him, as treasurer of the trustees of schools in township No. —, Range No. —, in the county of —, during the time of his continuance in office, and shall, when he ceases to be treasurer, deliver over to his successor, all moneys, bonds, notes, books, accounts, papers, records, vouchers, and all property of every description, in his hands, belonging to the said township, or placed in his hands for the use of the township, or any school therein, then the obligation to be void, otherwise to remain in full force." The security shall be approved of by the trustees of the township, and the bond shall be filed with the school commissioner of the county.

SEC. 10. Whenever the inhabitants of any township shall become incorporated as provided for in the foregoing sections of this act, and the treasurer's bond shall be filed with the school commissioner of the county, it shall be the duty of the said school commissioner to pay over to said treasurer all moneys in his hands, belonging to the township, and deliver over all bonds, notes, and mortgages taken for money due said township, and take a receipt for the same; and such treasurer shall have the right, and it is hereby made his duty, to collect all moneys due the township, as the same becomes due and payable, and to loan and appropriate the same as herein directed.

School commissioners to pay over money.

SEC. 11. Treasurers of townships shall be required to provide themselves with two well bound books, one to be called a Cash Book; and the other a Loan Book. They shall charge themselves in the cash book with all money received, shall show from whom received and on what account, and the credit shall show to whom and on what account the money was paid. They shall enter in the loan book, the name of any person to whom money is loaned; the amount loaned; the date of the loan; the rate of interest; the time when payable; the names of securities; or if real estate be taken, the description of the same.

Treasurers to procure books, &c.

SEC. 12. At every quarterly meeting of the trustees they shall examine the books and accounts of the treasurer, and see that they are properly kept; and the funds of the township secured as required by this act. The treasurer shall exhibit his books to the said trustees, and all notes, mortgages, vouchers and other papers which the trustees may desire to examine, touching the situation and management of the funds of the township.

Books to be examined by trustees.

SEC. 13. No township funds shall be paid out for any purpose whatever, except upon an order of the trustees, previously made.

Funds how paid out.

SEC. 14. Schedules of schools kept in townships, incorporated under the provisions of this act, shall be returned to the treasurers of townships, instead of school commissioners of counties.

Schedule to be returned.

SEC. 15. Treasurers of townships shall during the first week in the months of July and January, make abstracts from all schedules of schools returned to them, showing the name of each teacher; the total number of scholars attending each school; and the total number of days taught; to be submitted to the trustees of the townships.

Treasurer to make abstracts.

SEC. 16. On the second Mondays in July and January of each year, the trustees of schools shall meet at their usual place of meet-

Trustees to examine abstracts.

ing in the township, and shall examine the schedules of schools delivered to their treasurer, and also the abstract made by him as aforesaid ; and after correcting all errors which they may discover, or ascertain to exist, if there be any, they shall apportion the interest accruing upon the township funds among the several teachers, in proportion to the number of scholars, and number of days taught, and require the treasurer to pay the teachers their respective proportions.

To make certificate on the abstracts.

SEC. 17. The apportionment of money shall be equalized in each township by paying to every teacher the same rate of compensation : the trustees shall also make a certificate upon the abstract made by the treasurer, stating that they have compared the same with the original schedules of teachers, and find the same to be correct, that the schedules were made and certified in due form, and the township fund apportioned according to the same.

Treasurer to deliver abstracts, &c.

SEC. 18. Treasurers of townships shall deliver the abstracts of schools, made and certified as aforesaid, to school commissioners of counties, on or before the third Monday of January, annually, and shall receive from said school commissioners, annually, for the use of the teachers the amount of interest due the township, upon the school, college and seminary funds.

Surplus to be added to township fund.

SEC. 19. When the interest, subject to distribution in any township, shall amount to more than will pay the teachers therein for any year, the surplus shall be added to the township funds, and kept and loaned as principal. Inhabitants of townships, who do not become incorporated under the provisions of this act, shall be entitled to a distributive share of the interest on the school, college, and seminary funds, and to the interest on their township funds, as though they were incorporated ; but the funds of such townships shall remain in the hands of school commissioners of counties, and shall be distributed upon schedules of schools, kept as heretofore provided by law.

Signing a schedule or certificate to defraud.

SEC. 20. If any trustee of a school, or trustee of a township, or township treasurer, shall make or sign any schedule of a school, or certificate upon a schedule, with the intent to defraud any township, or any teacher of a school, or with intent to obtain a larger amount of interest than is legally due any township or any teacher of a school therein, such trustee or treasurer shall be liable to an indictment for the same, and upon conviction thereof, shall be fined in a sum not exceeding one thousand dollars, or imprisoned a time not exceeding twelve months, in the discretion of the court.

Liable to indictment

Certain acts applicable.

SEC. 21. The provisions of the act entitled, " An act providing for the security of the school funds," approved 12th February, 1835, shall be considered as applicable to township funds, loaned by treasurers of townships.

Punishment of treasurer.

SEC. 22. If any treasurer of a township shall unlawfully convert any township, or other school funds, to his own use, or shall fail to account for and pay over all funds which he may have received as treasurer, as required by law, he shall be deemed guilty of larceny, and upon conviction, shall be fined and imprisoned, as in other cases of larceny.

SEC. 23. The inhabitants of townships may at any time become

incorporated under the provisions of this act, and trustees of schools in townships shall be personally responsible for the proper application of the funds of the township. *Inhabitants may be incorporated.*

SEC. 24. In order that every General Assembly of the State may be in possession of information, showing the condition and state of the schools in the State, and the means of supporting those schools, trustees of schools in townships shall make annual reports to the school commissioners of counties, showing the following facts : *Trustees to make report to Auditor.*

First. The amount of the principal of the township funds on hand at the commencement of the year.

Second. The amount of interest which has accrued on said fund, to the time of the report.

Third. The amount of interest appropriated for the support of schools.

Fourth. The number of schools which have been kept in the township, the number of scholars taught, and the length of time which each school was continued.

Fifth. The amount of all interest received from school commissioners of counties.

Sixth. A statement showing the amount of money expended for all other purposes, than in paying teachers of schools, and the purpose or object to which the same was applied ; and school commissioners of counties shall make abstracts from said reports, and transmit the same to the Auditor of Public Accounts, together with similar abstracts from all townships, not incorporated, and the Auditor shall lay before each General Assembly, the information transmitted to him as aforesaid. *Auditor to report to General Assembly.*

SEC. 25. The trustees of schools in townships shall once in every year, call a meeting of the inhabitants of the township at some convenient place therein, and notice shall be given of such meeting, as is required in the case of meeting for the purpose of becoming incorporated ; and at such meeting the trustees shall submit to the people a statement, showing the amount and situation of the township funds, and the previous application of interest, showing all the facts required to be shown in the annual report to the school commissioners of counties ; and at such meeting the people shall have the right, and it is made their duty, to adopt such resolutions, and prescribe such rules for the conduct of the trustees, and for promoting the cause of education in the township, not inconsistent with the laws of the land, as they may deem proper. *People have the right to adopt resolution, &c.*

SEC. 26. No teacher shall be paid out of the school funds, unless he or she shall have obtained a certificate from the township trustees, of his or her qualifications as a teacher of the branches of learning taught by said teacher. *Teachers not to receive pay.*

APPROVED, March 4, 1837.

In force
March 4,
1837.

AN ACT to amend an act entitled an act to amend an act entitled "an act to provide for the application of the interest of the fund arising from the sale of the school lands belonging to the several townships in this state," approved 1st March, 1833, approved February 7th, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the seventh section of the act to which this is an amendment, shall be held to extend to, and embrace every case where any number of the inhabitants of any one or more congressional townships have themselves associated, or may hereafter associate themselves together for the purchase of any quantity of land not exceeding ten acres, for the encouragement of learning, and the conveyance for such lands shall be made to the trustees of school lands in the townships in which said land lies, by their corporate name, and shall be held by said corporation for the use of the persons associating themselves together as aforesaid, and their successors and assigns forever.

APPROVED, March 4, 1837.

Former act
extended.

In force
21st July,
1837.

AN ACT explanatory of the act to amend the several acts in relation to Common Schools, approved March 4, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the third section of the act to amend the several acts in relation to common schools, approved March 4th, 1837, shall be construed to extend, apply to, and embrace only that surplus revenue which is added to, and made to form a part of the common school fund, by the provisions of the first section of the act herein recited.

APPROVED, July 21, 1837.

SECRETARY OF STATE.

In force
Feb. 14,
1831.

AN ACT defining and regulating the duties and term of service of the Secretary of State.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the secretary of state shall be keeper of the seal of the state : he shall reside and keep his office at the seat of government : he shall provide suitable books for that purpose, and shall keep a fair register of all the official acts of the governor ; and when required, shall lay the same, and all papers, minutes, and vouchers relative thereto, before either

Shall keep
the seal,
and shall
reside at
seat of gov-
ernment.

His duties.

house of the general assembly : he shall also procure the necessary books, stationery, and presses for the safe deposit of the archives of his said office ; which shall be certified by the governor to the auditor of public accounts, who shall issue his warrant on the state treasurer for the amount of the same : he shall be clerk to the council of revision, and shall also make and preserve in his said office a record of the title and date of all laws, either approved or rejected by said council of revision, and of all acts generally of said council.

To be clerk
to the coun-
cil of re-
vision.

SEC. 2. All public acts, laws, and resolutions that have been, or shall be passed by the general assembly of this state, shall be carefully deposited in the office of secretary of state ; and the secretary of state is hereby charged with the safe keeping of said office, and all laws, acts, resolutions, and records, deposited, or which shall hereafter be deposited therein.

Public
records to
be kept in
secretary's
office.

SEC. 3. The secretary of state is hereby authorized and required to cause to be made out true and accurate copies of all laws, acts, and resolutions of the general assembly, which may be ordered by the said general assembly to be printed ; and such copies so made out, he shall deliver to the person or persons authorized to print the same. And the secretary of state shall likewise superintend the printing of such laws, acts, and resolutions, carefully comparing the printed copies with the original laws and rolls deposited in his office, correcting all errors that may appear in such printed copies ; and shall make and cause to be printed, at the end of such printed copy, an index to the same, and his certificate that the acts and resolutions so printed are exact copies of the rolls in his office, and also a table of contents, referring the page on which each act commences.

To furnish
copies of
laws to
public
printer.

Shall su-
perintend
printing.

SEC. 4. The secretary of state shall cause to be distributed to the several officers, and into the several counties in this state, the printed laws and journals of the general assembly, and likewise so many of the laws of the United States as shall be allowed to the several officers and to the several counties respectively, in such number and manner as is, or shall be allowed by the general assembly, and the reasonable expenses attending such distribution shall be paid out of the state treasury.

Distribu-
tion of
laws.

SEC. 5. The secretary of state shall, when required by any person or persons so to do, make out copies of all laws, acts, resolutions, or other records, appertaining to his said office, and shall attach thereto his certificate, under the seal of this state, and for which he shall be entitled to such fees and compensation as now are, or hereafter may be allowed by law.

To furnish
copies of
records to
individu-
als.

SEC. 6. All commissions required by law to be issued by the governor shall be countersigned by the secretary of state, who shall also affix the state seal thereto. He shall also make a register of such commission, specifying the person to whom given or granted, the office conferred, with the date and tenor of such commission, in a book, to be provided and kept for that purpose. The act entitled, "An Act regulating and defining the duties of secretary of state," approved, March 1, 1819, is hereby repealed.

To counter-
sign com-
missions.

This act to take effect from and after its passage.

APPROVED, February 14, 1831.

SEALS.

*In force
Feb. 19,
1819.*

AN ACT to provide for all Seals that may be necessary in the several official departments of the State of Illinois.

*Sec. of state
to procure
seal.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, and it is hereby enacted by the authority of the same,* That it shall be the duty of the secretary of state to procure a permanent state seal, of such device as may be agreed upon by the governor and justices of the supreme court.

Shall certify to auditor the cost thereof.

SEC. 2. That the secretary shall certify to the auditor of public accounts, the amount of the cost of the same, when procured, who shall issue a warrant on the treasurer for the amount, whose duty it shall be to pay the same out of any money in the treasury not otherwise appropriated.

*Seal of
supreme
court.*

SEC. 3. That the secretary of state shall provide a seal with such device as shall be agreed upon by the said governor and justices, for the supreme court of this state; the expense of which seal to be paid out of the treasury of this state.

*County
commissioners to
procure
seals for
their
counties.*

SEC. 4. That it shall be the duty of the county commissioners in each county, as soon as practicable, to cause to be procured all the necessary official seals that may be requisite in their respective counties; and that they shall be, and they are hereby authorized to draw on the county treasurer for the expense of any such seal or seals which shall be paid for in the same manner as other county debts are paid.

APPROVED, Feb. 19, 1819.

SECURITIES.

*In force
March 24,
1819.*

AN ACT providing for the relief of securities in a summary way in certain cases.

When security shall apprehend that principal will become insolvent.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That when any person or persons shall hereafter become bound as security or securities by bond, bill, or note, for the payment of money or other property, shall apprehend that his or their principal debtor or debtors, is or are likely to become insolvent, or to migrate from this state, without previously discharging such bond, bill, or note, so that it will be impossible or extremely difficult for such security or securities, after being compelled to pay the money or other property due by such bond, bill, or note, to recover the same back from such principal debtor or debtors, it shall or may be lawful for such security or securities, in every such case, provided an action shall have accrued on such bond, bill, or note, to require, by notice in writing, of his, her, or their creditor or creditors, or his, or their assignee, forthwith to put the bond, bill, or note by which he, she,

or they may be bound as security or securities, as aforesaid, in suit: and unless such creditor or creditors, or assignee, so required to put such bond, bill, or note in suit, shall, in a reasonable time commence action on such bond, bill, or note, and proceed with due diligence in the ordinary course of law, to recover a judgment for, and by execution to make the amount due by such bond, bill, or note, the creditor or creditors, or assignee so failing to comply with the requisitions of such security or securities, shall thereby forfeit the right which he or they otherwise have to demand and receive of such security or securities the amount which be due by such bond, bill, or note.

SEC. 2. That any security or securities, or in case of his, her, or their death, then his, her, or their heirs, executors, or administrators may, in like manner, and for the same cause, make such requisitions of the executors, or administrators, or assignee of the creditor or creditors of such security or securities, as is herein before enacted, may be made by a security or securities of his or their creditor or creditors; and in case of failure of the executors or administrators so to proceed, such requisition as aforesaid, being duly made, the security or securities, his or their executors or administrators making the same, shall have the same relief that is herein before provided for a security or securities, when his or their creditors shall be guilty of a similar failure.

SEC. 3. That nothing contained in this act shall be so construed as to affect bonds, collateral conditions, or the bonds which may be entered into by guardians, executors, administrators, or public officers.

SEC. 4. That the rights and remedies of any creditor or creditors, against any principal debtor or debtors, shall be in no wise affected by this act; any thing herein to the contrary, or seeming to the contrary notwithstanding.

SEC. 5. That in all cases where judgment hath been or shall hereafter be entered up in any of the courts of record within this state, against any person or persons as security or securities, their heirs, executors, or administrators, upon any note, bill, bond, or obligation, and the amount of such judgment, or any part thereof, hath been discharged by such security or securities, his, her, or their heirs, executors, or administrators, it shall be lawful for such security or securities, his, her, or their heirs, executors, or administrators, to obtain judgment by motion against such principal obligor or obligors, his, her, or their heirs, executors, or administrators, in any court where such judgment may be entered up against such security or securities, his, her, or their heirs, executors or administrators.

SEC. 6. That where the principal obligor or obligors have, or shall hereafter become insolvent, and there have been or shall be two or more securities jointly bound with the said principal obligor or obligors in any bond, bill, note, or other obligation, for the payment of money or other things, and judgment hath been, or hereafter shall be obtained against one or more securities, it shall and may be lawful for the court, before whom such judgment was, or shall be obtained, upon the motion of the party or parties against whom such judgment hath been entered up as securities, as afore-

said, to grant judgment and award execution against all and every of the obligors and their legal representatives for their and each of their respective shares and proportions of the said debt, with the damages and costs of the former suit.

Securities suffering judgment by default.

SEC. 7. That no security or securities, his, her, or their heirs, executors, or administrators, shall be suffered to confess judgment, or suffer judgment to go by default, so as to distress his, her, or their principal or principals, if such principal or principals will enter him, her, or themselves, a defendant or defendants to the suit, and tender to the said security or securities, his, her, or their heirs, executors, or administrators, other good and sufficient collateral security, to be approved of by the court before whom the suit shall be depending.

Special bail.

SEC. 8. That in all cases where judgment hath been, or hereafter shall be entered up in any of the courts of record in this state, against any person as appearance or special bail, for the appearance of another to defend any suit depending in such court, and the amount of such judgment, or any part thereof, hath been paid, or discharged by such bail, his, her, or their heirs, executors, or administrators, it shall and may be lawful for such bail, his, her, or their heirs, executors, or administrators, to obtain judgment by motion, against the person or persons for whose appearance they were bound, his, her, or their heirs, executors, or administrators, for the full amount of what may have been paid by said bail, his, her, or their heirs, executors, or administrators, together with interest and cost, in any court where judgment may have been entered up against such appearance or special bail: *Provided, always,* That no judgment shall be obtained by motion in any of the cases aforesaid, unless the party or parties against whom the same is prayed, shall have ten days previous notice thereof.

APPROVED, March 24, 1819.

SEAT OF GOVERNMENT.

In force Feb. 25, 1827.

AN ACT permanently to locate the Seat of Government of the State of Illinois.

The two Houses to meet in Representatives' Hall on 28th Feb. 1837, and select a point for Seat of Government. *Provido.* To vote for what point they please, and majority to fix the point.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the two houses of the General Assembly shall meet in the Hall of the House of Representatives on the 28th day of February, 1837, at ten o'clock, A. M., and then and there proceed by joint vote to select some suitable point or place for the permanent location of the seat of government for the State of Illinois: *Provided further,* that said election shall not continue more than one day.

SEC. 2. Each member shall be at liberty to vote for whatever point or place he may choose; and no point or place shall be deemed selected until it shall have received a majority of all the votes given.

SEC. 3. In case no point or place shall receive a majority of all the votes given on the first vote, the two Houses shall continue to vote until some point or place shall receive such majority: *Provided,* that this section shall not be construed to prevent an adjournment from day to day.

If no point on first vote receive a majority to continue voting. Proviso.

SEC. 4. When any point or place shall have received a majority as aforesaid, such point or place shall be and remain the permanent location of the seat of government for the state of Illinois, from and after the time for which it is fixed at Vandalia shall have expired, and the sum of fifty thousand dollars is hereby appropriated for the purpose of erecting a state house and other needful buildings (if any) which shall be expended under the direction of three commissioners to be appointed by the present General Assembly: *Provided,* that this act shall be null and void unless the sum of fifty thousand dollars be donated by individuals and secured by bonds, and security to be approved of by the Governor and made payable to the State treasurer, to become due at such times as the Governor shall direct; which bonds shall be executed and filed with the State treasurer, on or before the first day of May next, and which donation is especially designed to meet the appropriation herein before made and shall be applied exclusively and immediately to that object, and also, unless a sufficient quantity of ground not less than two acres, upon which to erect public buildings be donated and conveyed to the State without expenses to the State of Illinois.

Point receiving majority to be and remain the permanent Seat of Government. Appropriations for erecting public buildings. Under the direction of three commissioners. Proviso.

SEC. 5. An act entitled "An act permanently to locate the Seat of Government of Illinois," approved February 5th, 1833, is hereby repealed: *Provided, however,* that if the General Assembly shall fail to select a point for the Seat of Government as provided for in this act, then and in that case this section shall be void and of no effect. This General Assembly reserves the right to repeal this act at any time hereafter.

The act permanently to locate the Seat of Government, approved 5th Feb. 1833, repealed, and proviso.

APPROVED, February 25, 1837.

AN ACT supplemental to an act to permanently locate the Seat of Government of Illinois.

In force Feb. 3, 1837.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the county commissioners' court of Sangamon county is hereby authorized and empowered to convey to the Governor of the State of Illinois, for the use of the people of said State, all that piece or parcel of ground situate, lying and being in the town of Springfield, county of Sangamon and State of Illinois, known as the "public square," containing two and a half acres, be the same more or less, upon which piece or parcel of ground when conveyed as aforesaid, shall be erected a State House and other necessary public buildings for the State of Illinois. Archibald Job, of the county of Morgan, A. G. Henry, Thomas Houghan, of Sangamon county, are

Commissioners of Sangamon to convey to Government the public square in Springfield. To build State house and other

public buildings, and commissioners appointed to superintend. To give bond. Penalty. Condition.

hereby appointed commissioners to superintend the erection of the public buildings aforesaid, who, before they enter upon the discharge of their duty shall enter into bond to the Governor of this State, with approved security in the penalty of ten thousand dollars each, conditioned for the faithful performance of their duties, and shall severally take an oath, that they will well and truly and diligently discharge all their duties as commissioners to superintend the erection of public buildings. They shall cause to be erected a building of suitable size for a State House, upon the most approved and convenient plan and providing the necessary offices and committee rooms for public use. Said commissioners shall stipulate for all payments to be made out of the fund appropriated for that purpose and no other, and they shall be allowed three dollars per day for their services, out of the same fund.

Compensation.

SEC. 2. If the county commissioners' court of Sangamon county shall fail to convey the lot of land herein contemplated, the said commissioners shall procure a suitable and convenient lot of ground for the purposes aforesaid.

APPROVED, 3d March, 1837.

SHERIFFS AND CORONERS.

AN ACT concerning Sheriffs and Coroners.

In force June 1, 1827.

How sheriffs and coroners shall be commissioned.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That whenever any sheriff or coroner shall be elected for any county in this state, and return of the votes made to the secretary of state, the governor shall commission such sheriff or coroner to continue in office for two years, which commission shall be transmitted by the secretary of state, to the clerk of the circuit court of the proper county, whose duty it shall be to give immediate notice to such sheriff or coroner, of the receipt of his commission.

They shall enter into bond

SEC. 2. Every sheriff or coroner, elected as aforesaid, on receiving notice of his commission, shall, within thirty days thereafter, enter into a bond with the people of the state of Illinois, with good and sufficient security, to be approved of by the judge of the circuit court of his county, at the term next after the date of such bond, the sheriff in the penal sum of ten thousand dollars, and the coroner in the penal sum of two thousand dollars, conditioned for the faithful discharge of all the duties required or to be required of him by law, as sheriff or coroner, (as the case may be,) and shall also, at the time of giving such bond, take and subscribe before the clerk of the circuit court, the several oaths required by law; and an oath for the faithful performance of the duties of his office: *Provided*, that if no circuit court be held within thirty days after notice of such commission, as aforesaid, the clerk may approve the bond required aforesaid; which bond, in that case, shall be good and valid, until the end of the next succeeding circuit court.

and be qualified.

SEC. 3. The oaths so taken, and bond given by any sheriff or coroner as aforesaid, shall be filed and recorded by the clerk of the circuit court; and the taking and subscribing of the oaths shall be certified by him on the back of the commission, and a certified copy of such bond, under the seal of the court, shall be evidence in all courts in this state. *Oaths and bond to be filed and recorded.*

SEC. 4. If any sheriff or coroner, elected as aforesaid, shall neglect or refuse to enter into bond and take the oaths above required within the time above specified, or if any bond, approved by the clerk as aforesaid, shall be disapproved by the judge of the circuit court; and such sheriff or coroner shall not, during the term of the court, procure such security as the judge shall approve, in all such cases the office shall be deemed vacant; and the clerk shall immediately notify the governor of such vacancy; and it shall be the duty of the governor to issue a writ of election, and direct the time of holding the same; which election shall be proceeded in as other cases of election. *Neglect to give bond, &c. Office to be vacated, and writ of election issued.*

SEC. 5. It shall be the duty of every sheriff and coroner, when qualified as aforesaid, to execute and return all writs, warrants, process, orders, and decrees, of every description that shall or may be legally directed and delivered to him, within the limits of his county, under pain of contempt of the court from which such writ, warrant, process, order, or decree may have issued; and for the service of such process, and for keeping the peace, such sheriff or coroner may call to his aid the power of the county when necessary. *Duty of sheriffs and coroners.*

SEC. 6. The several sheriffs and coroners shall be conservators of the peace in their respective counties, and keep the same, by causing all offenders, on view, to be committed to prison, and to enter into recognizance to keep the peace, and appear at the next circuit court, and shall return all such recognizances to the next circuit court; and it shall also be the duty of all sheriffs and coroners to suppress all riots, routs, affrays, fightings, and all crimes, and breaches of the peace, and to do and perform all such other duties, as are, or may be required of them by law. *They shall be conservators of the peace.*

SEC. 7. It shall be the duty of the sheriff of each county, to attend all circuit courts, and courts of county commissioners, in his county, at the terms and sessions of such courts; and he shall have the custody and care of the court house and jail. *Sheriff to attend circuit court.*

SEC. 8. It shall be the duty of the coroner, to take inquest of violent or casual deaths happening in his county, or where the body of any person coming to such death shall be found in his county; and shall make return of such inquest to the circuit court; also to serve all writs and process, when the sheriff shall be a party to the suit; or when it shall be made to appear by affidavit, filed with the clerk who issues the process, that the sheriff is interested in the suit, or related to either party; and in case of a vacancy in the office of sheriff, by death, resignation, removal, or otherwise, the coroner shall do and perform all the duties pertaining to the office of sheriff, receive the proper fees and emoluments, and be liable to the same penalties and proceedings, as if he were sheriff, until such vacancy shall be filled, by the election and qualification of a new sheriff; *Provided*, nothing herein contained, shall pre- *Duty of coroner in relation to dead persons. When he shall act as sheriff.*

vent any sheriff whose term has expired, from continuing to perform the duties of the office, until his successor be qualified as is hereinafter provided.

Shall settle for co. revenue,

for state revenue

and procure quietus.

In default thereof the governor to order an election.

Sheriff and coroner not to be purchasers at sales.

Appointment of deputies.

Their duties.

Their neglect or misconduct.

Sheriffs to continue until superceded.

Notice of successor.

Former sheriff to deliver papers.

Court house and jail.

SEC. 9. It shall be the duty of each and every sheriff in this state, to make a settlement with the county commissioners' court of his county, for the taxes and moneys by him collected, or due the county, at the December term of such court, annually; and he shall settle and account with the auditor of public accounts, for all taxes and public moneys due the state, as required by law. And if any person shall hereafter be elected sheriff of any county in this state, who has been sheriff of any county of the late territory of Illinois, or of this state, and who shall, at the time of his election, be in arrear to the state or county for taxes, or other public money, such person shall not be commissioned: and where any such former sheriff shall be elected, and shall not, within thirty days after his election, produce to the governor a *quietus* from the proper officer of his county, and from the auditor of public accounts, for all moneys or revenue with which he shall be, at the time, chargeable, or a certificate of his having tendered the amount, the governor shall order a new election, as in case of neglect to qualify, or refusal to serve.

SEC. 10. No sheriff or coroner shall become the purchaser, nor procure any other person to become the purchaser for him, of any property, real or personal, by him exposed to sale, by virtue of any execution or other process; and all such purchases made by any sheriff or coroner, or by any other person in his behalf, shall be absolutely null and void.

SEC. 11. It shall be lawful for any sheriff to appoint a deputy or deputies; which appointment shall be in writing, filed in the office of the clerk of the circuit court, and entered of record; and any deputy when so appointed, and having taken and subscribed the several oaths required to be taken by the sheriff, shall be, and is hereby authorized to perform any and all of the duties required of the sheriff in the name of the sheriff; and the sheriff shall be liable for any neglect or omission of the duties of his officer, when occasioned by any such deputy, in the same manner as for his own personal neglect or omission. And any bond or security taken by any sheriff from his deputy, to indemnify such sheriff, shall be good and available in law.

SEC. 12. Whenever the office of any sheriff shall have expired, by the constitutional term of two years, it shall be lawful for the same person, whether re-elected or not, and his deputy or deputies to continue to perform all the duties of sheriff, until his successor shall be commissioned and qualified, as is hereinbefore required. And whenever any sheriff shall go out of office, and his successor in office shall be qualified as aforesaid, the clerk of the circuit court shall issue a notice in writing, stating that the sheriff elect has been commissioned and qualified according to law; which notice shall be served by the new sheriff, and the former sheriff shall thereupon transfer and deliver to the new sheriff, all the writs, process and papers belonging to his office except as is hereinafter excepted; and also the possession of the court house and jail of his county, and shall take from the new sheriff a receipt, specifying the papers

so delivered over, and the prisoners in custody, if any; which receipt shall be sufficient indemnity to the person taking the same.

SEC. 13. Every sheriff going out of office, at the expiration of his term, and having any writ of *feri facias*, or fee bill, which he may have levied, but not collected, or any tax list uncollected, shall be, and is hereby authorized to proceed on and collect such execution, fee bill, or tax list, in the same manner, as if his term of office had not expired; and any sheriff who has heretofore, or who may hereafter pay and advance the taxes assessed against any person, may proceed to collect the amount of money, so paid and advanced, in the same manner, to his own use, as if no payment had been made.

Collections to be made by former sheriffs.

SEC. 14. If any sheriff or coroner shall neglect or refuse, to pay over any money collected by virtue of any execution, process, or fee bill, to any person entitled to receive the same, or shall willfully neglect the duty of his office, to the prejudice or injury of any person or persons, such person or persons may, on application to the court, where the bond of such sheriff or coroner is filed and recorded, and on sufficient cause being shewn, obtain leave to prosecute the bond of such sheriff or coroner; and the same proceedings shall be had thereon as in other cases of bonds for the performance of covenants; and after judgment had, any person injured, and who would be entitled to sue on said bond, on application as aforesaid, may obtain a writ of inquiry of damages on such judgment; and in every case when damages shall be assessed, execution shall be issued for the amount of such damages and costs, and collected for the use of the injured party; or upon the failure of any sheriff or coroner after demand made to pay over any money by him collected, by virtue of any execution, process, or fee bill, to any person entitled to receive the same, such person may proceed against such sheriff or coroner, in a summary way, before the circuit court, by motion, upon giving to such officer ten days' notice of the application, and recover the amount so neglected to be paid, with ten per cent. damages thereon, for such detention, and shall have execution therefor: *Provided*, that in all such cases, if the sheriff shall pay or satisfy the amount claimed by the party prosecuting, with costs, under the direction of the court, before final judgment, or in any subsequent prosecution before inquest found, all further proceedings on such bond, or judgment, shall be stayed by the court.

Neglect to pay over money collected.

See acts of Feb. 13, 1835 under head of "Justices of the Peace."

SEC. 15. If any sheriff shall fail to settle with and pay over to the county commissioners' court according to law, any money which he may have collected or received, belonging to such county, it shall be lawful for the county commissioners of such county to proceed against such sheriff, in a summary way, before the circuit court, by motion, upon giving such sheriff ten days' notice of such application, and recover the amount due such county, with ten per cent. damages thereon, for such neglect, and shall have execution therefor; or may proceed against such sheriff and his securities for such delinquency, upon his bond of office.

Failure to settle with county commissioners.

SEC. 16. If any sheriff shall fail or neglect to settle with the auditor of public accounts, according to law, and pay over all money due to the state from such sheriff, it shall be the duty of the auditor to proceed against such sheriff, by motion, either in the supreme

Failure to settle with auditor.

court or in the circuit court of the county where such sheriff shall reside, upon giving to such sheriff, if the motion be made in the supreme court, twenty days' notice of the application, or ten days' notice, if made in the circuit court: and recover judgment against such sheriff for the amount he may owe the state, with ten per cent. damages thereon, and have execution therefor: or may proceed in either court aforesaid, against such sheriff and his securities, upon his bond of office. This act repeals "An act defining the duties of sheriffs and coroners of the state of Illinois," approved, March 2, 1819, and all other acts and parts of acts repugnant to this act; but rights acquired, or forfeitures incurred under those acts, are not hereby affected. This act to take effect on the first day of June next.

APPROVED, Feb. 12, 1827.

Acts repealed.

In force Feb. 7, 1831.

AN ACT to amend an act, entitled "An act concerning Sheriffs and Coroners," approved, Feb. 12, 1827.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That so much of the act, to which this is an amendment, as provides that application shall be made to, and leave obtained from, the circuit court, before an action can be brought and maintained on any sheriff's or coroner's official bond, for neglect or failure to pay over moneys collected by them, or either of them, by virtue of any execution, process, or fee-bill, to any person entitled to receive the same, or who shall wilfully neglect their official duty, be, and the same is hereby repealed. This act to take effect from and after its passage.

APPROVED, Feb. 7, 1831.

Act requiring leave to sue sheriff's bond repealed.

In force Jan. 7, 1831.

AN ACT concerning Sheriffs and Coroners.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That whenever the office of any coroner shall have expired by the constitutional term of two years, it shall be lawful for the same person, whether re-elected or not, to continue to perform all the duties of coroner until his successor shall be commissioned and qualified.

APPROVED, Jan. 7, 1831.

Coroner to serve until his successor be qualified.

AN ACT prescribing the duties of Coroners.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That it shall be the duty of the several coroners in this state to execute all process within their respective counties, in all cases where just exception can be taken to the sheriff or his deputy or deputies, or where there is no sheriff; and in all cases, upon affidavit made and filed with the clerk of any court of record in this state, of the partiality, prejudice, consanguinity, or interest of the sheriff, or of the deputy of the sheriff, of any county where suit is about to be brought, or shall have been commenced, it shall be the duty of the clerk to issue and direct original or other process in the suit, to the coroner, who shall execute the same and attend to the suit throughout, in the same manner as the sheriff would or ought to have done. And that hereafter, the partiality, prejudice, consanguinity, or interest of any sheriff, or of any deputy sheriff, shall not be cause for a change of venue, but the coroner shall perform the duties as above prescribed; or if there shall be no coroner, an elisor, to be appointed by the clerk, shall supply the place of the sheriff, in like manner as the coroner is hereby required to do.

SEC. 2. Be it further enacted, That every coroner, as soon as, and whenever he shall, be informed or know of the body of any person being found dead (supposed to have come to his or her death by violence, casualty, or any undue means) shall forthwith proceed to summon a jury of twelve good and lawful men, of the neighborhood wherein said dead body shall be found lying or being, to repair at such time as he shall direct to the place as aforesaid, and to inquire (upon a view of said body) how, and in what manner, and by whom or what he or she came by his or her death; and in case any juror or jurors, so summoned, shall fail, neglect, or refuse to attend, the said coroner shall summon another or others, from among the bystanders, to serve in his or their place.— And every person so summoned as a juror, and failing, neglecting, or refusing to appear at the time and place required, without having a reasonable excuse for such failure, &c. shall forfeit the sum of two dollars to the county, to be recovered before any justice of the peace of said county, on the certificate of the coroner, that he failed, &c. without a reasonable excuse to him made therefor.

SEC. 3. Be it further enacted, That as soon as the said jurors shall have assembled at the place where the said dead body may be lying or being, the coroner shall designate one of the number as foreman, and administer to him an oath in the following form, to wit: "You, as foreman to this inquest, do solemnly swear" (or "affirm" as the case may require,) "that you will diligently inquire, and true presentment make, how, in what manner, and by whom or what, the body which here lies dead, came to its death; and that you will deliver to me, the coroner or this county, a true inquest thereof, according to such evidence as shall be given you, and according to the best of your knowledge and belief, so help you God." And to the other jurors one as follows, to wit: "The same oath which A. B. your foreman, has just now taken on his

And to the jurors generally. Particular duty of juror of inquest. Their verdict to be made up and signed. Coroner's power to summon and to compel the attendance of witnesses. When any person is implicated by the testimony of such witnesses, as having been instrumental in procuring such death, coroner how to proceed. Witness refusing to enter his recognizance to be committed to jail. Coroner to seal up the verdict of the jury, &c. and make return thereof to the clerk of the circuit court. Persons implicated as above, how to be proceeded against. Coroner to bury the body, the expense whereof how paid. Coroner's duty as to the effects, &c. found on or about the body of deceased.

part, you and each of you do solemnly swear," (or "affirm," as the case may require) "to keep on your respective parts, so help you God." And it shall be the duty of the jurors, as sworn as aforesaid, to inquire how, in what manner, and by whom, or what, the said body came to its death, and of all other facts of and concerning the same, together with all material circumstances in any wise related to, or connected with the said death, and make up and sign a verdict, and deliver the same to the coroner.

SEC. 4. *Be it further enacted*, That the said coroner shall have power to summon, or cause to be summoned, and compel the attendance of all such witnesses whose testimony may probably be requisite to the proving of any fact or circumstance relating to the object of such his inquest, and to administer to such witness the proper oath. And if the evidence of any witness shall implicate any person or persons, as the unlawful slayer of the person over whom the said inquisition shall be held, the said coroner shall reduce said evidence to writing, and cause the same to be subscribed by the witness so giving it; and shall further recognize any such witness in such sum as he may think proper, to be and appear at the next term of the circuit court for the said county, there to give evidence of the matter in question, and not depart without leave. And if any witness shall refuse to enter into such recognizance, it shall be the duty of the said coroner to commit the witness so refusing to the common jail of the county, there to remain until the next term of the circuit court: and the coroner shall carefully seal up and return to the clerk of the circuit court for the county, the verdict of the jury, the evidence so taken and subscribed, and the recognizances, &c.; and it shall be the duty of the clerk to carefully file and preserve the same.

SEC. 5. *Be it further enacted*, That if at any inquisition held under the authority of this act, any person or persons shall be implicated with the unlawfully slaying, or with the aiding and assisting in the unlawful slaying of the body in question, it shall be the duty of the coroner to apprehend and commit, or cause to be apprehended and committed, him, her, or them, to the common jail of the country, there to remain until discharged by due course of law.

SEC. 6. *Be it further enacted*, That the coroner, as soon as the verdict of the jury shall have been rendered, shall take immediate measures to bury the body which may have been the object of the inquest; the expense attending the burial to be paid out of the deceased person's estate, if sufficient there be, if not, by the county. And if there shall be found on or about the said body, any money, papers, goods, or other valuable thing or things, the said coroner shall, giving ten days' notice of the time and place, proceed to sell the same, if goods, and deposit the proceeds of such sale, together with all papers and money so found, in the county treasury, (taking the treasurer's receipt therefor) there to remain, subject to the order of the legal representatives of the said deceased, if claimed any time within five years thereafter; and should such money or other thing, not be claimed within the time aforesaid, then the same to vest in the county: *Provided*, That nothing herein contained, shall prevent the whole or any part of said moneys being liable to the payment of the coroner's fees or funeral expenses: *Provided, how-*

Provido.

ever, This section shall not extend to any person except he shall have been a stranger or a non-resident.

SEC. 7. *Be it further enacted*, That in case of the absence of the coroner, any magistrate, being certified of any dead body, as before mentioned, shall be authorized to perform the duties of the coroner, as pointed out by this act.

APPROVED, Jan. 20, 1821.

In the absence of the coroner any magistrate may perform his duties as pointed out by this act.

AN ACT to extend the time of settlement for the county revenue to certain sheriffs therein named.

In force Feb. 20, 1833.

Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the sheriffs of the counties of Sangamon, Morgan, St. Clair, Randolph, Green, Perry, Johnson, Pope, Franklin, Gallatin, Edwards, Shelby, Macon, Jefferson, Hamilton, Fayette, Macoupin, Monroe, Clinton, and Washington, be and are hereby allowed until the first Monday in June next, to settle with the county commissioners' courts of said counties, for the tax collectable for and during the year one thousand eight hundred and thirty-two: *Provided*, said sheriffs shall pay over to the treasurers of their respective counties on the first Monday in March next, all the money that they may at that time have collected for the taxes aforesaid.

APPROVED, Feb. 20, 1833.

Sheriffs allowed until first Monday in June next to pay over county revenue.

Provido.

SHOWS AND JUGGLERS.

AN ACT to prohibit shows of wax figures, tricks of Jugglers, &c.

In force May 1, 1829.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That no person or persons, shall be permitted to exhibit any shows, wax figures, or perform any feats, such as circus riding, or exhibitions, or any thing of the like nature, or perform any tricks, such as are played by persons generally known by the name of thimble players, rope and wire dancers, sleight of hand with cards, or cups and balls, unless the same be shown and performed by such person or persons, without fee, charge, or compensation therefor, either directly or indirectly; and if any person or persons, shall wish to show, exhibit or perform, as above stated, and charge therefor, he or they shall previous thereto, apply to the treasurer of the county, who shall direct what sum shall be paid therefor, not less than five, nor more than one hundred dollars, for the term of time agreed on, which shall not exceed two weeks in the county; and on payment of the sum required, the

Shows, &c. for pay prohibited.

Unless licensed and taxed.

treasurer shall give a receipt therefor, which shall be presented to the clerk of the commissioners' court of the county, and on payment of fifty cents fee to said clerk, he shall give a permit to such person, to show, exhibit, and perform as aforesaid, for the time agreed on by the treasurer, and the said clerk shall file said receipt and charge the treasurer with the sum received into the county treasury: and if any person or persons shall exhibit any shows, wax figures, circus riding performances, or any such thing, or perform and play any such tricks as above described, and shall charge and exact, or in any manner receive compensation therefor, and shall not have obtained a permit so to do, such person or persons shall forfeit and pay, for each and every such offence, any sum not less than ten, nor more than one hundred dollars, to be recovered by action of debt before any justice of the peace of the county, in the name of the county commissioners, or county treasurer, for the use of the county, with costs of prosecution.

Penalty for showing.

Manner of prosecuting

SEC. 2. If complaint be made on oath, in writing, by a county commissioner, treasurer, or any citizen of the county, that any person or persons, (naming them) are in the county, and to the best of his belief, violating the law, in the particulars above stated, it shall be the duty of the justice to issue a *capias* or warrant, and if affidavit be not made, a summons shall be issued.

This act to be in force on the first day of May next.

APPROVED, January 23, 1829.

SLANDER.

AN ACT declaring certain words actionable.

In force Dec. 27th 1822.

Certain words declared actionable.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That if any person shall falsely use, utter, or publish words, which in their common acceptance shall amount to charge any person with having been guilty of fornication, or adultery, such words so spoken shall be deemed actionable, and he, she or they, so falsely publishing, speaking or uttering the same shall be deemed guilty of slander.

Certain words declared slander, whether used in conversation or not of judicial proceeding.

SEC. 2. That it shall be deemed slander, and shall be actionable, to charge any person with swearing falsely, or with having sworn falsely, or for using, uttering or publishing words of, to, or concerning any person, which in their common acceptance, amount to such charge, whether the words be spoken in a conversation of, and concerning a judicial proceeding, or not.

SEC. 3. That this law shall take effect, and be in force, from and after its passage.

APPROVED, Dec. 27, 1822.

STATE BANK.*

AN ACT supplemental to the several acts for finally closing the affairs of the State Bank and Branches. *In force Feb. 25, 1833.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That the state treasurer be, and he is hereby required as treasurer to do and perform all the duties which have heretofore been required of the late cashier of the principal bank, and as treasurer to keep books, in which shall be contained all the accounts of the state bank and branches. *Treasurer to perform the duties of cashier.*

SEC. 2. It shall be the duty of the treasurer to call on the attorney general and state's attorneys, and require a semi-annual report of all debts due said bank in their respective circuits, whether due by note, bond, mortgage, or otherwise, with a particular statement of the situation and solvency of the debtor or debtors, and the probability of collecting the same, and he shall cause to be delivered to the said attorney general and state's attorneys, if not already in their hands, all notes, bonds, mortgages, &c., for collection, in the circuits in which they are respectively required to prosecute, and take their receipts for the same. *Shall call on the attorney general, &c. for reports of debts.*

SEC. 3. It shall be the duty of the said attorney general and state's attorneys, to proceed with all possible despatch to collect or otherwise secure, in the best manner they can, all the debts due to the said state bank. They shall have power, and it is hereby made their duty, to call on the several justices of the peace, or other officers in whose hands any notes, bonds, mortgages, &c., have at any time been placed, and take such steps in relation to them, as may be deemed most advisable to carry into effect the objects of this act. *Duties of attorney general and state's attorneys in relation to bank notes.*

SEC. 4. In all cases where the debtors to said bank (collectors and persons owing for property bought of the bank excepted) shall desire to make prompt payment of their debts, they shall be permitted to do so, at any time before the first day of January next, and shall be entitled to a deduction of all interest due, or to become due, in and by said notes, bonds, &c., and ten per cent. of the principal: *Provided,* That in no case shall the amount so discounted, exceed twenty-five per cent.; and execution shall be stayed in all such cases until the said first day of January next: *Provided,* when in the opinion of the said attorneys, there shall be manifest danger of debts being lost by such delay, the execution shall not be stayed unless the judgment debtor will give additional security to be entered upon the back of said execution, or on the docket or record, from whence the same issued, and witnessed by the sheriff or other officer having charge of the same. And the security so entered shall be considered as a new party to such judgment and execution, and may be proceeded against by a new execution, jointly with the original debtor or debtors. *Prompt payment. Persons making entitled to deduction.*

SEC. 5. Whenever there may be any property mortgaged to

*NOTE. *The Old State Bank. See "Banks."*

said bank, or which has been bought in for the use of the state under heretofore existing laws, it shall be the duty of the said attorney general and state's attornies, to cause the said mortgages to be foreclosed, or the property which may have been bought in like manner to be sold, on a credit of two years, the purchaser giving security by confession of judgment, with release of errors, in a judgment bond, and there shall always be a *lien* on the property so sold, for the payment of the purchase money. Whenever it shall become necessary to sell any property now belonging to the said bank, or to the state, under the provisions of this act, it shall be the duty of the said attorney general or state's attornies, to give at least six weeks previous notice of the time, place, and terms of sale, in the newspaper printed by the public printer, and also, by putting up notices of the same, in at least three of the most public places in the county where the property is situated, and the sale shall be at public vendue, and between the hours of ten o'clock in the morning and four o'clock in the evening; and if it shall not be in the power of the attorney general or state's attornies to attend at the day of sale, he or they may by letter authorize the sheriff of such county to do and perform whatever is required of the said attorney general or state's attornies, by the provisions of this act, and make a report of their proceedings accordingly, which shall be as binding as if done by the said attorney general or state's attornies.

Property ordered to be sold.

SEC. 6. Whenever any property shall be authorized to be sold by order of court on foreclosure of a mortgage, the same shall be done in pursuance of existing laws in that case made and provided, but the terms shall be the same as is required by this act.

When the collection of debts would distress the widow or orphans.

SEC. 7. The estate of any deceased person who was bound to the said bank either as principal or security, shall be discharged from all liabilities to the same, where it shall be made to appear to the satisfaction of the circuit court of the proper county, that the collection of such debt would have a tendency to distress the widow or orphan children of such deceased debtor, and upon making the fact appear to the satisfaction of the court as aforesaid, the court shall order the same to be entered of record, and thenceforward such decedent's estate shall be released to said widow and orphans, and no longer subject to the claim or claims of said bank.

President and directors.

SEC. 8. It shall be the duty of the president and directors to settle with the late cashiers of said bank and branches as respects their claims for contingent expenses, and to sanction the same where it has been retained, and where not, to certify the amount which they shall find reasonably due to each, to the auditor, who shall thereupon draw his warrant upon the treasurer in favor of such cashier; and the second section of the "act to amend the act establishing the state bank of Illinois," passed February 13, 1827, is hereby repealed.

Appeals.

SEC. 9. The attorney general and state's attornies having charge of the bank claims for collection, may take appeals from any decision against the bank, within six months from the date of such decision, by filing a transcript after the same, and without giving bond, whether such decision shall be had before a justice of the peace, or before any circuit court of this state.

SEC. 10. It shall be the duty of the treasurer to correspond with the said attorney general and state's attornies, and to obtain all the information possible on the subject of the said state bank, and to lay the whole in one general report before the next general assembly; and the said treasurer is hereby required to call on the attorney general for advice and direction in all cases where any question of law may be involved, and as to the mode of proceeding in all cases for the collection of debts, &c.

Treasurer.

Shall report.

SEC. 11. The treasurer shall, as soon as may be, after the passage of this act, with the aid and assistance of the attorney general, state's attornies, and directory of the bank, ascertain whether any balance be due from the late cashiers of branch banks, or other officers who have had the collection of money due to the state bank, and if any, to cause suit to be brought on their bonds or otherwise, as the case may be.

Where balance is due from late cashiers.

SEC. 12. The attorney general and state's attornies, shall be allowed an additional compensation, at two and one half per cent. upon all moneys hereafter collected by them and accounted for, in full of all duties enjoined upon them by this act. And it shall be the duty of the treasurer, to furnish the said attorney general and state's attornies with copies of all receipts for costs paid by said bank, and which remain uncollected.

Additional compensation allowed for collection.

APPROVED, Feb. 25, 1833.

STATE RECORDER.

AN ACT abolishing the office of State Recorder.

In force June 1, 1833.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That from and after the first day of June next the act entitled "An act establishing a recorder's office for the state, approved Feb. 12, 1827," be, and the same is hereby repealed.

An act establishing the office of state recorder repealed.

SEC. 2. That after the first day of June next, all deeds and title papers of whatever description, for lands lying in this state, whether owned by residents or non-residents, shall be recorded in the county where the lands are situated: *Provided,* such county be organized, and if not, then they shall be recorded in the county to which such unorganized county shall be attached for judicial purposes.

Deeds required to be recorded in counties where the lands are situated.

When county is unorganized.

SEC. 3. It shall be the duty of the state recorder to make out, and transmit to the recorders in the several counties, such other and further abstracts of all deeds recorded in his office, as will make the same complete up to the said first day of June next; and also to furnish upon application and the payment of the legal fees therefor, any owner of lands whose deed or deeds have been recorded in his office, abstracts thereof duly certified, which abstracts may be recorded in the recorder's office where such lands are sit-

State recorder shall make out and transmit to county recorders abstracts of deeds recorded in his office.

uated, in the same manner that deeds are now required to be recorded.

Shall deliver over his books and papers to the secretary of state.

Secretary entitled to the same fees as recorder.

Compensation.

Deeds and title papers to be in force from the time of filing the same.

County recorders required to keep their office at the seat of justice of their several counties. Law inconsistent herewith repealed.

SEC. 4. That it shall be the duty of the said state recorder, on or before the first day of August next, to deliver all the books and papers properly belonging to said state recorder's office, to the secretary of state, which said books and papers shall remain in the office of the said secretary of state for safe keeping, subject to be inspected by all persons concerned; and all copies made and certified, by the said secretary of state, shall have the same force and effect as if the same were certified by the said state recorder; and the said secretary shall have the same fees for any copy certified by him, that the state recorder is now entitled to receive. When said books and papers are so delivered into the secretary's office, he shall certify the same to the auditor, who shall thereupon issue his warrant on the treasury, in favor of said state recorder for the reasonable cost of the same, to be estimated by said auditor.

SEC. 5. That from and after the first day of August next, all deeds and other title papers, which are required to be recorded, shall take effect, and be in force from and after the time of filing the same for record, and not before, as to all creditors and subsequent purchasers, without notice, and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers without notice, until the same shall be filed for record in the county where the said lands may lie.

SEC. 6. The several recorders of this state, are hereby required to keep their offices at the seat of justice of the counties respectively, and a neglect or a refusal to do so, shall vacate the same; and the governor, upon the certificate of the clerk of the county commissioners' court, or other satisfactory proof of the fact, shall fill such vacancy by appointment.

SEC. 7. That all laws and parts of laws coming within the purview of this act shall be, and the same are hereby repealed.

APPROVED, Jan. 18, 1833.

STATE TREASURY AND TREASURER.

In force March 20, 1833.

AN ACT concerning the payment of money out of the State Treasury.

Money not to be paid out of treasury to individuals when indebted to the state.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That no money shall hereafter be paid out of the state treasury to any officer of this state, towards his salary, or to any individual who is now, or shall hereafter be, indebted to the state, to the state bank of Illinois, or any of its branches, until such officer or individual shall have accounted for, and paid into the treasury or to the state bank of Illinois, or either of its branches, as the case may be, all sums for which he may be liable: *Provided, however,* that officers or individuals who

have paid the regular instalments to the state bank, or either of its branches, shall not be affected by this act.

SEC. 2. The treasurer, circuit attorneys, and attorney general of the several judicial circuits of this state, are hereby required, on or before the first day of March next, and at the end of every three months thereafter, to transmit to the auditor of public accounts, a list of all persons who are, or may be defaulters to the state bank, or any of its branches, and the amount due from each of such defaulters, and the auditor and treasurer shall ascertain from such list the names of all officers and individuals, who are entitled to any money out of the treasury, and detain from all such persons, as may appear to be defaulters, as aforesaid, the amount which may appear to be due to the state, the state bank of Illinois, or either of its branches, until such defaulter shall pay, or otherwise discharge such debt: *Provided, however,* that in all cases where the salary of any officer, or money due to any individual shall be detained, as aforesaid, it shall be the duty of the auditor of public accounts, upon the request of such officer or individual, to cause suit to be commenced against such officer or individual within sixty days after such request, and to cause the same to be prosecuted with a reasonable diligence to its final termination. All acts and parts of acts coming within the purview and meaning of this act, be, and the same are hereby repealed.

This act to take effect and be in force from and after the twentieth day of March next.

APPROVED, Feb. 12, 1833.

AN ACT concerning the State Treasurer.

In force, June 11, 1831.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter each and every state treasurer shall give bond, and a duplicate bond with good and sufficient securities, in the sum of fifty thousand dollars, with a clause inserted that if at any time thereafter additional security be required, the same shall be given; the necessity of which additional bond and duplicate bond shall be left to the governor. Each and every bond, and duplicate hereby required, when made out and signed, shall be presented to the governor and judges of the supreme court, for inspection and approval, and if approved of by the governor and judges, or by the governor and any two of the judges, the original shall be deposited in the office of the secretary of state, and the duplicate copy in the office of the auditor of public accounts. Said bond or bonds and duplicates shall, in all other respects, be drawn as required by the law. So much of the law now in force as requires the treasurer to give bond in the sum of twenty thousand dollars, and that the governor alone shall approve the bond, is hereby repealed: *Provided, however,* that whenever a vacancy shall happen in the office of treasurer, either by death, resignation, or otherwise, the governor, lieutenant governor, and

State treasurer to give bond in \$50,000.

To be approved of by governor and judges, and deposited in secretary's office.

Former provision repealed. Proviso.

auditor of public accounts, shall approve of the sufficiency of the security.

This act to take effect from and after its passage.

APPROVED, 11th January, 1831.

STATIONERY.

*In force
Jan. 6,
1835.*

AN ACT providing Stationery and Firewood for the use of the General Assembly.

*Duty of
secretary of
state.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That previous to every session of the general assembly, it shall be the duty of the secretary of state to provide a sufficient quantity of stationery, for the use of both branches of the general assembly, and to keep the same in his office, or some other safe place, except when it shall become his duty to part with it upon application by the proper authority.*

*Auditor to
issue his
warrant for
the amount.*

SEC. 2. *Be it further enacted, That after having procured a suitable quantity of stationery, as aforesaid, upon the best terms it can be obtained, he shall present his bill (specifying the quantity, with charges of transportation, if there be any) to the auditor of public accounts, whose duty it shall be to give him a warrant upon the treasurer for the amount, if, in his opinion it shall be just and reasonable, who shall pay the same out of any moneys in the treasury not otherwise appropriated.*

*To adver-
tise to re-
ceive pro-
posals.*

SEC. 3. *Be it further enacted, That the secretary is hereby authorized to advertise, if necessary, three months previous to each regular meeting of the general assembly, that he will receive proposals for furnishing firewood for the use of the said assembly, and it is required of him to contract with the person who will furnish it with the greatest certainty, and at the cheapest rate.*

APPROVED, Jan. 6, 1825.

*In force,
July 21,
1837.*

AN ACT to prevent Disasters on Steamboats navigating the waters within the jurisdiction of Illinois.

*Duty of
owners of
steamboats.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That it shall be the duty of the owners of steamboats navigating the Mississippi, Ohio, Wabash, Illinois, and other rivers and lakes within the jurisdiction of this State, to have a competent master, officers, and crew, on board, and to have a substantial and sufficient engine, boilers or boiler, and to have the same at all times in good and safe order and condition, and have the vessel supplied with all necessary boats, tackle and furniture, and in every respect seaworthy. In ascend-*

ing and descending navigation, said boats shall conform to the following regulations: The descending boat shall keep the shore or bar she may be on, until the ascending boat passes; and when both boats are running, the ascending boat shall keep the middle of the channel, or in the deepest water, and in all cases where it is practicable leave room for the descending boat to pass on either side.

*Duty of
masters.*

SEC. 2. That when two boats shall meet in a contracted part of the river, or in any narrow or intricate channel, both boats shall stop their engines, or work them very slow, until they pass each other; and in the night time the descending boat shall not take any of the small shoots, but shall keep the main channel in order to avoid the ascending boats.

SEC. 3. That it shall be the duty of the masters and officers of all steamboats to keep their vessels at all times well and steady trimmed, and particularly in coming to and departing from shore, and for that purpose the passengers and all others on board the boat shall strictly obey the directions of the master or officers on watch, and keep the place and position they may direct, and under such pecuniary penalties as the rules and regulations of the boat in that behalf shall impose; which rules and regulations shall be constantly kept up in at least five conspicuous and different parts of the boat.

*Passen-
gers to pay
strict obedi-
ence to
command
of officers
on board.*

SEC. 4. That the master and owners shall be severally and jointly responsible for damages which any person may sustain by the neglect or refusal to comply with the requisitions of the foregoing sections. And moreover, if any loss of life shall ensue from any such neglect and refusal, the officers on watch, and conducting the boat for the time being, shall be deemed guilty of the crime of manslaughter, and upon conviction thereof shall be punished accordingly.

*Masters
and owners
responsible.*

*Man-
slaughter.*

SEC. 5 That it shall not be lawful for steamboats to run races the one against the other; and the owners and officers severally and jointly shall be liable and responsible for all damages which any one may sustain from any accident or casualty which may happen during said race. And moreover, in case of loss of life or lives in consequence of said racing, the master of the boat, or person or persons having the command thereof for the time being, shall be deemed guilty of a high crime and misdemeanor, and upon conviction thereof shall be liable to imprisonment in the penitentiary of the state, for any term not exceeding ten years.

*Respon-
sible for
damages.*

SEC. 6. That in landing passengers from steamboats, the master shall cause the vessel to be brought to shore whenever practicable and convenient, and especially in cases where females or children are to be landed; and whenever impracticable or decidedly inconvenient so to do, may land the passengers in good, sufficient and comfortable boats, to be at all times kept for that purpose, and managed by a sufficient number of civil, competent, and careful men; and during the time of disembarking from the steamboat into the small craft, and of leaving the vessel, the engine shall be stopped and the speed of the vessel checked. And any neglect or refusal to comply with any of the requirements of this section shall subject the owners and master of the boat to the payment of all damages

*Duty of
master.*

that may result to any person or persons, from such neglect or refusal; and in the event of loss of life thereby, the master or other officer in command of the boat for the time being shall be deemed to be guilty of a high misdemeanor, and on conviction thereof, shall be punished as provided for in the foregoing section of this act.

Duty of master when gunpowder is on board.

SEC. 7. It shall be the duty of the master and officers of any steamboat carrying gunpowder as freight, to store the same in the safest part of the vessel, and separate and apart from articles liable to spontaneous combustion, and where in discharging the cargo it will not be necessary to carry any lighted candle, lamp or flambeau; and all boats carrying gunpowder as freight shall have printed cards, stating the fact, placed in the cabin and in other conspicuous parts of the boat, so as to give notice to the passengers. And the master and officers failing to comply with the provisions of this section, shall forfeit one hundred dollars for every time the same shall be so neglected, which may be recovered by action of debt, by and for the use of any person who may sue for the same, before any justice of the peace in this state; and shall moreover be liable for all damages which may happen to any person by reason of the failure.

SEC. 8. It shall not be lawful for any person or persons to put or keep any gunpowder on any steamboat without first giving the master or officers notice thereof; and any person or persons so offending shall be liable to pay a sum of one hundred dollars to and for the use of any person who may sue for the same, in an action of debt before any justice of the peace in this State; and moreover, the person or persons so offending shall be liable for all damages which may happen to any person thereby.

Copies of this act to be put up in steamboats.

SEC. 9. That copies of this act shall be printed and put in frames, and kept publicly placed in the cabin and steerage of each steamboat navigating the Mississippi, Ohio, Wabash, Illinois, and other rivers and lakes within the jurisdiction of this state; and a failure to comply with these provisions shall subject the master and owners to a penalty of one hundred dollars for each day the same shall be omitted, to be recovered in an action of debt before any justice of the peace by and for the use of any person who may sue for the same.

This act deemed public.

SEC. 10. This act shall be deemed a public act, and shall take effect from and after the first day of October next, and the Secretary of State shall cause authenticated copies thereof to be published in one of the newspapers published in each of the cities of St. Louis, Louisville, and Cincinnati, and cause at least one number of each of said newspapers, containing the same, to be filed in his office; and such publication shall be deemed sufficient notice of this act, to all masters, officers, and owners of steamboats who may come within its provisions.

APPROVED, 21st July, 1837.

STOCK.

AN ACT for the protection of Stock against Castor Beans.

In force Jan. 16, 1836.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That no person or persons shall hereafter be permitted to plant and cultivate castor beans, without securing the same with as good and sufficient a fence or fences as is generally put up, and used, for the protection of grain crops in the neighborhood.

Duty of persons cultivating castor beans

SEC. 2. That all persons violating this act shall be fined in the sum of twenty-five dollars, to be sued for, and recovered, by any person, before any justice of the peace within the proper county, in an action of debt, the one half whereof shall go to the person so suing, the other half into the treasury of the county where such penalty is recovered; nothing herein contained shall in any wise prejudice the owner or owners of animals which may be injured by the negligence of any of the persons aforesaid from recovering adequate damages for such injury.

Penalty for violation.

This act to take effect from and after its passage.

APPROVED, Jan. 16, 1836.

SURVEYORS.

AN ACT regulating the appointment and duties of County Surveyors.

In force June 1, 1829.

SEC. 2. [*Be it enacted by the people of the State of Illinois, represented in the General Assembly,*] Each and every surveyor shall, previous to his entering upon the duties of his office, take an oath that he will in all things, as county surveyor, perform the duties of his office to the best of his skill and judgment, without favor or affection, which oath may be administered by any judge, or justice of the peace, in the county to which such surveyor is appointed, and shall be endorsed on his commission.

Oath.

By whom administered.

SEC. 3. It shall be the duty of the said county surveyor to make all surveys within the bounds of his county, that he may be called upon to make, either by himself, or deputy properly authorized by him, and competent to perform the duty, within a reasonable time after application is made to him.

Duty of surveyor.

SEC. 4. Each and every surveyor may appoint one or more deputies to assist him in the performance of the duties of his office; each deputy shall take an oath similar to that previously taken by the surveyor himself, and the surveyor shall be responsible for the official acts of his deputy.

Deputies.

SEC. 5. All chainmen necessary shall be employed by the person wanting surveying done; They shall be good and disinterested to

Chainmen

be sworn. persons, to be approved of by the surveyor, and they shall be sworn by the surveyor to measure justly and exactly, to the best of their knowledge.

Original field notes.

Surveys to be made agreeably thereto.

Corners bearing trees.

Mounds.

Corner stones.

Proprietor to be furnished with the original field notes. Record.

What it shall contain.

Shall be subject to inspection.

Made prima facie evidence.

To be delivered to successor.

Penalty for not doing so.

How recovered.

Records not conclusive.

Fees.

Acts repealed.

SEC. 6. It shall be the duty of all county surveyors, previous to their making any survey, under the authority of this act, to furnish themselves with the field notes of the original survey of the lands which they may be called on to survey; and all surveys made by county surveyor, shall be made agreeably to the original survey of the land. For the purpose of perpetuating every survey, the surveyor shall be required to establish his corners by taking bearing trees, and noting particularly their course, and distance, and where there are no trees within a reasonable distance, the surveyor shall perpetuate his corners by erecting mounds: *Provided*, that in all cases where it shall appear practicable, the surveyor shall require the person having the survey made, to furnish suitable stones; and at each and every corner made and establish, a stone shall be permanently placed in the ground, and in such cases it shall not be necessary to erect mounds; and shall moreover furnish the proprietor of every tract of land, with a copy of the original field notes, of every tract of land he may survey. It shall also be the duty of each county surveyor to provide himself with a well bound book, in which he shall carefully and legibly record and note down every survey made by him, giving therein the name of the person, the survey of whose land is so recorded, and describing as near as practicable, the metes and bounds of the land, and noting the date on which the survey was made; and such record shall be subject to the inspection of every person who may think himself interested; and a certified copy thereof, under the hand of the surveyor, shall be admitted as *prima facie* evidence in any court of record in this state.

SEC. 7. It shall be the duty of every county surveyor, or other person having the official record of such surveyor in his possession, to deliver up the said record to his successor, whenever he may be applied to for that purpose; and every person who, having possession thereof, will refuse to deliver the same to such successor, when demanded, shall forfeit and pay one dollar and fifty cents for every day he may detain it after demand, to be recovered by any person who will sue for the same, before any justice of the peace of the proper county, one half to the use of the person suing, and the other half to the use of the county. No act or record by any surveyor or his deputy, as aforesaid, shall be conclusive, but may be reviewed by any competent tribunal, in any case where the correctness thereof may be disputed.

SEC. 8. The county surveyors respectively, shall be entitled to such compensation, from each person to whom they have rendered their services as surveyors, as may be, or now is allowed by law.

SEC. 9. The act entitled "An act for the appointment of surveyors for the several counties of this state," approved, January 31, 1821, and the act, entitled "An act supplemental to an act entitled an act for the appointment of surveyors for the several counties of this state," approved, February 9, 1821, are hereby repealed; but every county surveyor holding his office under

those acts, shall continue in office as if this act had not been passed.

This act to take effect on the first day of June next.

APPROVED, Jan. 14, 1829.

NOTE. This act is amended: See act of 1835, under the head of "Recorders and Surveyors."

SUITS BROUGHT BY OR AGAINST THE STATE.

AN ACT directing the mode of bringing suits, by or against the state. *In force June 1, 1829.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall and may be lawful for the auditor of public accounts of the state of Illinois, to sue for any demand which the people of the state may have a right to claim, and to be sued and to sue, to plead and to be impleaded, to answer and be answered, to defend and to be defended, in any court of record, or other place, where justice shall be judicially administered, in the name of the auditor of public accounts, for the people of the state of Illinois: *Provided*, that the auditor shall not be liable to be sued in any other county than that in which the seat of government is situated. And the attorney general of this state shall prosecute and defend all suits brought by, or against the auditor of public accounts, as is prescribed by law. From all judgments, so rendered, appeals may be taken to the supreme court, and it shall be the duty of the auditor to take such appeal, if in his opinion justice has not been done in the court where such judgment has been rendered; nor shall any judgment against the auditor, in his representative capacity, bind him personally, or be conclusive upon the state, until the same shall be examined by the general assembly. In cases of appeals by the auditor, he shall not be required to give bond, or security, as in other cases.

SEC. 2. When judgment shall be rendered against the auditor of public accounts for the state of Illinois, it shall be the duty to forward a copy of such judgment, and proceedings thereon, to the next general assembly, and if approved by the same, an appropriation shall be made to satisfy the same, or such part thereof as the said general assembly may deem just.

SEC. 3. The act entitled "An act directing the mode of bringing suits, by and against the state, counties, townships, and other corporate bodies, and for other purposes," approved, March 23, 1819, is hereby repealed.

This act to be in force, from and after the first day of June next.

APPROVED, Jan. 3, 1829.

TAVERNS.

In force
Feb. 14,
1823.

AN ACT to prevent the selling of Spirituous Liquors in this state, and for other purposes.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That from and after the passage of this act, no tavern keeper, grocer, or retailer of spirituous liquors, or other person or persons, shall sell, exchange, or otherwise deliver to any Indian or Indians, within the boundaries of this state, any spirituous liquors, under the penalty of twenty dollars for every such offence, to be recovered before any court of competent jurisdiction; the one half thereof for the use of the county wherein the offence is committed, and the other half for the person informing.

SEC. 2. *Be it further enacted,* That no citizens of this state, or other person or persons, shall purchase of or otherwise trade or barter with any Indian or Indians in this state, for any fire arms, knives, tomahawks, blankets, or horses, under the penalty of not less than twenty dollars, nor more than one hundred dollars, for every such offence, recoverable before any court of competent jurisdiction; the one half part thereof for the use of the county in which such offence is committed, and the other half to the person informing.

SEC. 3. *Be it further enacted,* That all accounts of tavern keepers, grocers, or other retailers of spirituous liquors in this state, for liquors by them or their agents retailed, sold, or delivered, for a greater or higher amount than fifty cents, shall be void; and no court shall entertain jurisdiction of any account of any tavern keeper, grocer, or other retailer, as aforesaid, in which there shall be more than fifty cents charged for liquor; and if any tavern keeper, grocer, or retailer of spirituous liquors, shall sue for or otherwise claim of or from any one person in this state, a greater or higher amount than fifty cents for spirituous liquors, the claim shall be void: *Provided,* That nothing in this act contained shall prevent, or in any way delay, the collection of debts, heretofore contracted for spirituous liquors, as aforesaid: *And provided, also,* that nothing in this section contained, shall prevent any tavern keeper, grocer, retailer, or other person, as aforesaid, from selling spirituous liquors to other persons, larger in quantity than one quart, and suing for and recovering pay for the same.

SEC. 4. *Be it further enacted,* That the county commissioners' courts in this state, shall not grant a license for any tippling shop, commonly called a grocery, unless the person applying therefor, shall give good and sufficient security, that he or she will also keep meat and lodging, for at least four persons, over and above his or her common family, and stabling and provender for their horses.

APPROVED, February 14, 1823.

§20 fine for selling liquor to Indians.

§20 penalty for trading with Indians.

Tavern keepers cannot recover more than fifty cents for spirituous liquors.

May sell by the quart and recover pay therefor.

Persons keeping tippling shops, &c. to give security to entertain 4 persons and their horses

AN ACT to license and regulate Taverns.

In force
Feb. 27,
1819.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, and it is hereby enacted by the authority of the same,* That for preventing disorders and the mischiefs that may happen by multiplicity of public houses of entertainment, no person or persons shall in future have or keep any public inn or tavern, ale-house, or dram-shop, or public house of entertainment, in any county, town, or place within this state, unless such person or persons shall first obtain permission or license from the county commissioners; which shall continue for one year and no longer, under the penalty of one dollar per day for every day on which the party offending shall keep such public inn, tavern, ale-house, dram-shop, or public house of entertainment, to be recovered with cost, before any justice of the peace in an action *qui tam*; two thirds whereof shall go to the use of the poor of the county, where the offence may be committed, and the other third to the prosecutor suing for the same to effect.

License to be obtained

SEC. 2. *And be it further enacted,* That every person licensed as aforesaid, who shall knowingly suffer any disorder, or drunkenness, or unlawful games, whatever, in such his, her, or their houses, his, her or their license or licenses shall be suppressed by the county commissioners' court; no such inn-keeper, tavern-keeper, or other person, as aforesaid, shall presume to continue such house of entertainment of his own accord after such suppression, or the expiration of his license, without new license as aforesaid, under the penalty of one dollar per day, as aforesaid, to be recovered in manner aforesaid; two-third parts whereof shall go to the use of the poor of the county where the offence shall be committed, and the remaining third to the party prosecuting.

Disorder and drunkenness.

SEC. 3. *And be it further enacted,* That all tavern-keepers and inn-keepers, as aforesaid, shall provide and furnish good entertainment and accommodations for man and horse, under the penalty of five dollars, to be recovered in manner and for the use aforesaid.

Entertainment.

SEC. 4. *And be it further enacted,* That the county commissioners shall, at the time of granting any license under this act, demand of, and from the person obtaining the same, any sum not exceeding twelve dollars, which they may deem reasonable, taking into consideration the stand where such tavern is to be opened; which sum so received, shall, by the said commissioners, be paid to the county treasurer for the use of the county; and the said commissioners shall also demand of such applicant, one dollar for the use of the clerk.

License.

Price of.

Amended: See act of 1835.

SEC. 5. *And be it further enacted,* That no license shall be given unless the persons requiring the same shall first become bound to the governor of the state, with security, if required, in any sum not exceeding three hundred dollars, that he, she, or they, on obtaining such license, shall, at all times, be of good behavior, and observe all the laws and ordinances, which are, or shall be made, or be in force relating to inn-keepers, or tavern-keepers within the state; and whoever shall keep a tavern, inn,

Bond if required.

or public house of entertainment, before he or she has given bond, as aforesaid, such person shall suffer the same penalty as if the same had been done without license.

Persons not qualified shall not be allowed to retail.

SEC. 6. *And be it further enacted,* That no person or persons other than such as are or shall be qualified so to do by this law, shall presume, under any color of pretense, to sell, barter with, or deliver any wine, rum, brandy, or other spirits, or strong water, beer, cider, or any mixed or strong liquors to be used, or within his, her, or their houses, yards, or sheds, or to be with his, her, or their knowledge, privity, or consent, used or drunk, in any shelters, places, or woods, near or adjacent to them, by companies of servants, slaves, or others; nor to retail or sell to any person or persons, any rum, brandy, or other spirits or strong water, by less quantity or measure than one quart, nor any beer, ale, or cider, by any quantity less than two gallons, the same liquors being respectively delivered to one person, and at one time, without any collusion or fraud, contrary to the true intent and meaning of this law; every person offending herein shall pay a fine of twelve dollars, on conviction by indictment, to the use of the proper county.

Harboring and trusting minors.

SEC. 7. *And be it further enacted,* That if any inn-holder, or keeper of public house, or any retailer of liquors, shall receive, harbor, entertain, or trust any minor under the age of twenty-one years, or any servant, knowing them, or either of them to be such, or after having been cautioned or warned to the contrary by the present guardian, master, or mistress of such minor or servant, in the presence of one or more credible witness, such inn-holder, keeper of public house, or retailer of liquors, so offending, shall, for the first or second offence, being duly convicted thereof, forfeit and pay the sum of three dollars for every such offence, over and above the loss and forfeiture of any debt such minor or servant shall or may contract for liquors or entertainment; and upon conviction for the third offence, the license obtained by such offender is hereby declared null and void; and the person so repeatedly offending shall forfeit and pay the sum of twelve dollars, on conviction by indictment, to the use of the county, and be forever after incapable of keeping a public house or inn within the state.

Selling to slaves.

SEC. 8. *And be it further enacted,* That no person shall, by any means, presume to furnish, supply, or sell to any bond servant or slave, any rum, brandy, spirits, or any other strong liquors, or strong water, mixed or unmixed, either within or without doors, nor shall receive, harbor, or entertain any slave or servant in or about his, her, or their houses, without special license had and obtained under the hand of such master or mistress of such slave or bond servant respectively, under the penalty, for the first offence, of three dollars, and for every succeeding offence, four dollars, to be recovered before any one of the justices of the peace of the county where the offence is committed, on the proof of one or more credible witnesses, or upon the view of any justice within the respective counties where the act shall be committed.

Fines.

SEC. 9. *And be it further enacted,* That the several fines imposed by this law, shall, on conviction, be levied by execution on the offender's goods, or his, her, or their persons shall be committed to the county jail until the same be paid; and all fines and for-

Shall be levied by execution.

feitures recovered by virtue hereof, which are not otherwise appropriated by law, shall be applied in manner following, that is to say: one moiety thereof shall be paid to the father, mother, guardian, master, or mistress of the minor or servant, entertained as aforesaid, or to the servant himself, as the justice of the peace may direct; the other moiety shall be paid to the treasurer, for the county where the offence was committed.

SEC. 10. *And be it further enacted,* That the county commissioners, at the time of granting any license or permission under this act, shall make out a list of rates for the government of the tavern-keepers applying for the same; and it shall be the duty of the clerk of the commissioners, at the time of granting such license or permission, under the direction of the court aforesaid, to make out a copy of the rates, and deliver the same to the person applying for permission or license to keep tavern, who shall set up the same in the most public room in his or her house; and any person who shall presume to sell at any higher rates than those made by the court, or without having first set up his rates aforesaid, for every such offence shall forfeit and pay twenty dollars, for the use of the person suing for the same, before any justice within this state.

List of rates.

SEC. 11. *And be it further enacted,* That any two county commissioners of the proper county may, in vacation, grant a license; which license shall continue in force one year, unless the same shall be recalled and rendered null by the county commissioners, at a regular term of their court; which license so granted shall be subject to the same regulations, and the persons to whom the same is granted shall be subject to the same penalties and forfeitures, as is prescribed by the previous sections of this act.

License may be granted in vacation.

APPROVED, Feb. 27, 1819.

AN ACT to amend an act to License and Regulate Taverns. *In force Feb. 12, 1835.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That hereafter the county commissioners' court of each and every county in this state shall, at the time of granting a license under the act to which this is an amendment, demand of, and from the person receiving the same, a sum not more than fifty dollars, taking into consideration the stand where such tavern is to be located or opened, which sum so received, shall, by the said commissioners, be paid to the County Treasurer of said county: which license so granted, shall authorize such person to keep a tavern and retail liquors for the term of one year.

Duration of license.

APPROVED, Feb. 12, 1835.

Sum to be demanded for license.

In force
Feb. 10,
1837.

AN ACT to amend the act to License and Regulate Taverns.

Act against
selling
cider, re-
pealed.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That as much of the act regulating taverns, approved February 14th, 1833, as makes the selling of cider in any quantity less than two gallons, finable, be and the same is hereby repealed, and all persons being citizens of this state are hereby authorized to sell any quantity of cider or beer that they may think proper.

SEC. 2. This act to take effect and be in force from and after its passage.

This bill having remained before the council of revision ten days, (Sunday excepted) and the General Assembly being in session, it has become a law, this 10th day of February, A. D. 1837.

A. P. FIELD, *Secretary of State.*

TOWN PLATS.

In force
Feb. 27,
1833.

AN ACT providing for the recording of town plats.

When any
persons
wish to lay
out a town
in this state,
how to pro-
ceed.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That whenever any county commissioners or other person or persons wish to lay out a town in this state, or an addition or subdivision of out-lots, said commissioners or other person or persons shall cause the same to be surveyed, and a plat or map thereof made by the county surveyor, if any there be, of the county in which said town or addition is situated; but if there be no county surveyor in the county, then, and in that case, by the county surveyor of an adjacent county; which plat or map shall particularly describe and set forth all the streets, alleys, commons, or public grounds, and all in and out-lots, or fractional lots, within, adjoining, or adjacent to said town, giving the names, widths, corners, boundaries, and extent of all such streets and alleys.

Lots in-
tended for
sale shall
be num-
bered.

SEC. 2. All the in-lots intended for sale shall be numbered in progressive numbers, or by the squares in which they are situated, and their precise length and width shall be stated on said plat or map; and all out-lots which shall not exceed ten acres in size, shall, in like manner, be surveyed and numbered, and their precise length and width stated on the plat or map, together with any streets, alleys, or roads which shall divide or border on the same.

Commis-
sioners,
or others
laying out
said town,
to place
corner
stones.

SEC. 3. The county commissioners, proprietor, or proprietors of the town, addition, or subdivision of out-lots, by themselves or agent, shall, at the time of surveying and laying out the same, plant and fix at a corner of the public ground, or at the corner of a public lot, if any there be, and if there be none, then at the corner of some one of the in-lots in the town, and at the corner of each out-lot a good and sufficient stone, of such size and dimensions,

and in such manner as the surveyor shall direct, for a corner from which to make future surveys; and the point or points where the same may be found, shall be designated on the plat or map.

SEC. 4. The plat or map, after having been completed, shall be certified by the surveyor and the county commissioners, and every person or persons whose duty it may be to comply with the foregoing requisitions, shall, at or before the time of offering such plat or map for record, acknowledge the same before a justice of the supreme court, justice of a circuit court, or a justice of the peace in the county where the land lies, a certificate of such acknowledgment shall be by the officer taking the same endorsed on the plat or map; which certificate of the surveyor and acknowledgment shall also be recorded, and form a part of the record.

SEC. 5. The plat or map, when made out, certified, acknowledged, and recorded, as required by this act, every donation or grant to the public, or any individual or individuals, religious society or societies, or to any corporation or bodies politic, marked or noted as such on said plat or map, shall be deemed in law and in equity a sufficient conveyance to vest the fee simple of all such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes as a general warranty against such donor or donors, their heirs and representatives to the said donee or donees, grantee or grantees, for his, her, or their use, for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever. And the land intended to be for streets, alleys, ways, commons, or other public uses, in any town or city, or addition thereto, shall be held in the corporate name thereof, in trust to, and for the uses and purposes set forth, and expressed or intended.

SEC. 6. If the county in which said town or addition is situated shall not be organized, then, and in that case, the plat or map shall be recorded in the recorder's office of that county to which the county in which said town is situated shall at the time be attached for judicial purposes.

SEC. 7. Where any town, addition, or subdivision of out-lots has been heretofore laid out, and lots sold in this state, either by county, agents, commissioners, or other persons, and a plat or map of the same has not been acknowledged and recorded as required by the act, entitled "An act to provide for the recording of town plats," approved, January 4, 1825, and the amendment to said act, passed at a subsequent session, it shall be the duty, and it is hereby required of the present county commissioners, or a majority of them, in such county, or other person or persons, proprietors, who have laid out the same, or his, her, or their legal representatives, to have the same fairly, fully, and clearly made out, certified, acknowledged, and recorded in the proper county, in the form and manner required by this act, noting and particularly describing the donations of land, or otherwise, to individuals, societies, bodies politic, or for common or public uses, if any shall have been made, by the first day of January, 1834: *Provided,* That if the lots shall have been differently numbered, and sales made, and they cannot well be changed, they shall be returned as originally stated; but in all other respects the plat or map shall

conform to the requisitions of this act, and the provisions of this section shall be so construed to include all towns and additions to towns which shall be laid out from the passage of this act up to the first day of August next; and if any county commissioner or commissioners, or other person or persons, whose duty it is to comply with the requisitions in this section named, shall neglect or refuse so to do, he or they shall forfeit and pay the sum of one hundred dollars for each and every month he or they shall delay a compliance.

Person laying out a town, and neglecting to fix corner stones.

SEC. 8. If any county commissioner, or other person or persons, shall hereafter lay out any town, or addition to any town or city, and neglect to plant the corner stones therein, or cause the same to be surveyed and platted in any other manner than that which is prescribed in this act, every person so offending shall forfeit and pay the sum of one hundred dollars.

Persons disposing of lots in any town, before the requisitions of this act have been complied with.

SEC. 9. If any person or persons shall dispose of, offer for sale, or lease for any time exceeding five years, any out or in-lot, in any town, or addition to any town or city, or any part thereof, which shall hereafter be laid out, until all the foregoing requisitions of this act shall have been complied with, every person so offending shall forfeit and pay the sum of twenty-five dollars for each and every lot or part of lot so sold or disposed of, leased, or offered for sale.

Compensation of surveyor and recorder.

SEC. 10. The county surveyor, who shall lay out, survey, and plat any town or addition, shall be entitled to receive twenty-five cents for each and every in and out-lot, and the recorder of the county recording the same shall receive the sum of four cents for each and every lot the same may contain.

Forfeitures and liabilities.

SEC. 11. All forfeitures and liabilities which may be incurred and arise under this act, shall be prosecuted for, and recovered in the name of the county treasurer of the proper county, one half thereof to go to the county in which the town or addition lies, to be applied to such objects and for such purposes as the county commissioners' court shall direct, and the other moiety to the use and benefit of the inhabitants and owners of property in such town or city, to be disbursed under the direction of the trustees, or corporation officers, in improving the streets and alleys, and other objects of internal improvement in said town, the addition, if any, inclusive; and it is hereby made the duty of the county treasurer, whenever he shall be satisfied that this act has been violated, and a forfeiture incurred, to bring suit, and prosecute for the same.

Persons failing to comply with the provisions of this act.

SEC. 12. Any commissioners or other persons who have failed or neglected to comply with the provisions of the act, approved, January 4, 1825, requiring town plats to be recorded, and the act amending the same, referred to in this act, shall be, and they are hereby released and entirely discharged from any penalty incurred under the provisions of said acts, except in cases where judgments have been rendered; and all suits now pending to recover any such forfeiture, shall or may be dismissed on the defendant or defendants paying all costs of suit; and the said act of January 4, 1825, and the amendatory act thereto, be, and they are hereby repealed.

This act to take effect from and after its passage.

APPROVED, Feb. 27, 1833.

TRESPASSING.

AN ACT to Prevent Trespassing, by cutting timber.

*In force
Feb. 27,
1819.*

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, and it is hereby enacted by the authority of the same, That every person who shall cut, fell, box, bore, or destroy, or carry away any black walnut, black, white, yellow, or red oak, white wood, poplar, wild cherry, blue ash, yellow or black locust, chesnut, coffee, or sugar tree, or sapling, standing or growing upon land belonging to any other person or persons, without having first obtained permission so to do from the owner or owners of such lands, shall forfeit and pay for such tree or sapling, so cut, felled, boxed, bored, or destroyed, the sum of eight dollars; and every person who shall cut, fell, box, bore, or destroy any tree or sapling not herein above named and enumerated, standing or growing upon land belonging to any other person or persons, without permission, as aforesaid, shall forfeit and pay for every such tree or sapling, so cut, felled, boxed, bored, or destroyed, the sum of three dollars.

SEC. 2. That the penalties herein above provided shall be recoverable, with costs of suit, either by action of debt, in the name, and for the use of the owner or owners of the land, or by action *qui tam*, in the name of any person who will first sue for and recover the same; the one half for the use of the person so suing, and the other half for the use of the owner or owners of the land; *Provided, always*, that if in any action that may be instituted by virtue of the provisions herein contained, before a justice of the peace, the defendant shall set up a title to the land on which the tree or trees are alleged to have been cut, felled, boxed, bored, or destroyed, and shall forthwith give good and sufficient security to prosecute his claim or title to the said land to effect, within one year, or to appear and defend an action to be instituted against him within one year, by virtue of the provisions herein contained, in any court of record within the state having cognizance thereof, and in either case to abide by and satisfy the judgment that may be given in such court; then the said justice shall proceed no further in the said cause, but shall forthwith dismiss the parties; and it shall be the duty of the said justice thereupon to tax the bill of costs that may have accrued before him; and so soon as the action shall be renewed or instituted for the purpose aforesaid, to transmit the said bill, together with the recognizance to be taken as aforesaid, to the clerk of the court in which such action shall be instituted or renewed; which costs so taxed and transmitted, shall be made a part of the judgment to be rendered as aforesaid.

SEC. 3. That if the said recognizance shall be forfeited for not prosecuting, as aforesaid, the justice shall proceed to enter judgment against the defendant for the demand of the plaintiff, which shall be taken to be confessed, and execution shall thereupon issue against the said defendant and his security or securities; and if the said recognizance shall be forfeited for not appearing and defending, or not abiding by and satisfying the judgment that shall be

given in the court above, the party for whose benefit such recognition was taken, may, by a writ or writs of *scire facias*, proceed to judgment and execution thereon.

SEC. 4. That if any person or persons shall, after the passing of this act, under pretense of any lease or otherwise, cut, fell, box, bore, or destroy any black walnut, black, white, yellow, or red oak, white wood, poplar, wild cherry, blue ash, yellow, or black locust, chesnut, coffee, or sugar tree, or sapling, standing or growing upon any lands within the state, reserved, appropriated, or intended for the use and support of schools, or for the use and support of religion, such person or persons shall forfeit and pay, for every such tree or sapling so cut, felled, boxed, bored, or destroyed, the sum of eight dollars; and if any person or persons shall cut, fell, box, bore, or destroy any other tree or sapling, not herein above named and enumerated, standing or growing upon any lands within the state, reserved, appropriated, or intended for the use aforesaid, such person or persons shall forfeit and pay for every such tree or sapling so cut, felled, boxed, bored, or destroyed, the sum of three dollars.

SEC. 5. That the penalties provided in the preceding section of this act, shall and may be recovered with costs of suit, either by action of debt, brought by and in the name or names of the overseer or overseers of the poor of the township in which such tree or sapling shall have been cut, felled, boxed, bored, or destroyed as aforesaid, for the use of the poor of the county, or by action *qui tam*, in the name of any other person, who will first sue for and recover the same; the one half for the person so suing and recovering, and the other half for the use of the poor of the county in which such tree or sapling shall have been cut, felled, boxed, bored, or destroyed; and it shall be the duty of the overseer or overseers of the poor, on complaint made to him or them, against any person who may have cut, felled, boxed, bored, or destroyed any tree or sapling standing or growing upon any lands reserved for the uses aforesaid, within his or their township, or upon his or their view or knowledge of such trespass, forthwith to institute an action against the trespasser for the purpose aforesaid, unless an action *qui tam* shall have been previously instituted for the said trespass, in the name of some other person, according to the provisions herein contained; and the said overseer or overseers, in the settlement of his or their accounts, shall be allowed a reasonable credit for the trouble and expense of such prosecution.

APPROVED, February 27, 1819.

In force
June 2,
1833.

AN ACT to amend an act to prevent Trespassing by cutting timber, approved, February 27, 1819.

Part of
act re-
pealed.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the sixth section of the act to prevent trespassing by cutting timber, approved Febru-*

ary 27, 1819, be, and the same is hereby repealed. This act to take effect and be in force from and after the first day of June next.

APPROVED, Feb. 25, 1833.

VANDALIA LOTS.

AN ACT relative to the unsold Lots in the town of Vandalia, In force March 1, 1833, and for other purposes.

SEC. 1. *Be it enacted by the people of the state of Illinois, represented in the General Assembly, That the auditor of public accounts shall, as soon as may be, cause all the unsold lots within the donation to, and within the town of Vandalia, to be revalued by three disinterested freeholders, who shall, before entering upon the duties required by this act, take an oath before some justice of the peace of Fayette county to revalue said lots impartially, to the best of their judgment; and after the valuation shall be made out, and filed in the auditor's office, the auditor shall give public notice that he will on a certain day, to be fixed upon by him, offer the lots so valued to the best bidder for prompt payment: Provided, the said lots shall not be sold for less than the valuation aforesaid.*

SEC. 2. That the lots offered for sale as provided for in the first section of this act, and remain unsold, may be entered at the auditor's office in the same manner as now provided for by law.

SEC. 3. That the map of the town of Vandalia, signed by the commissioners appointed by law to designate and locate the seat of government under the act entitled "An act for the removal of the seat of government of the state of Illinois," approved, March 30, 1819, and now deposited in the auditor's office, shall be deemed and taken as a true and correct map of the lots, streets, and squares, in said town, with the exception of the north half of the public square; and shall be evidence in all courts to establish the laying out of said town lots, streets, and squares, with the exception aforesaid.

SEC. 4. It shall be the duty of the auditor of public accounts carefully to keep the map aforesaid in his office, and shall cause the same, together with the map of the north half of the public square, divided into lots, in virtue of the seventeenth section of an act entitled, "An act to authorize the auditor of public accounts to sell lots in the town of Vandalia, and for other purposes," approved, January 22, 1829, to be recorded in the recorder's office in the county of Fayette, which record, when made, shall be evidence in all courts.

SEC. 5. That it shall be the duty of the auditor of public accounts to issue scrip to the administrators of the estate of John F. McCullom, deceased, for the amount of money paid on lot number two, in square number twenty-five, and lot number four, in square number thirty-eight, in the town of Vandalia, being ninety-two

dollars and thirty-three cents ; and the scrip so issued shall be receivable at the treasury for any debts due the state. This act to take effect and be in force from and after its passage.

APPROVED, March 1, 1833.

* VENUE.

In force
Jan. 23,
1827.

AN ACT to provide for changing the Venue in civil and criminal cases.

Venue
when it
may be
changed in
civil cases.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That if either party, in any civil cause, in law or equity, which may be depending in any circuit court, shall fear that he will not receive a fair trial in the court in which the action is pending, on account that the judge is interested or prejudiced, or is related to, or shall have been of counsel for either party ; or that the adverse party has an undue influence over the minds of the inhabitants of the county wherein the action is pending ; or that the inhabitants of such county are prejudiced against the applicant, so that he cannot expect a fair trial, such party may apply to the court, in term time, or the judge thereof in vacation, by petition, setting forth the cause of the application, and praying a change of *venue*, accompanied by an affidavit, verifying the facts in the petition stated ; and such court or judge, reasonable notice of the application having been given to the other party or his attorney, shall award a change of *venue* to some county where the causes complained of do not exist ; and in all such cases where the judge is interested or is related to, or shall have been counsel for either party, the court in term time may award a change of *venue*, as aforesaid, in their discretion, without any application from either party : *Provided*, that neither party shall have more than one change of *venue*.

How to ap-
ply for.

When in
criminal
cases.

When and
how to ap-
ply for.

SEC. 2. That when any defendant in any indictment or information, in any court in this state shall fear that he will not receive a fair and impartial trial in the court in which the trial is pending, on account that the judge is prejudiced, or that the minds of the inhabitants of the county wherein the trial is pending are prejudiced against him, such party may apply to the court in term time, or the judge thereof in vacation, for a change of *venue* by petition, setting forth the cause of such application, verified by affidavit, reasonable previous notice being given to the attorney general, or circuit attorney, prosecuting for the district, and the court or judge shall award a change of *venue* to the next nearest county where the causes complained of do not exist ; and in case the applicant be in custody, or confined in jail, the court or judge shall make an order to the sheriff to remove the body of such ap-

* See act of Feb. 16, 1831, title " Courts ;" and also, act of January 23d, 1829, same title, sec. 8.

plicant to the common jail of the county to which the *venue* is changed, and there deliver him to the keeper of said jail, together with the warrant by virtue of which he is confined, or held in custody, not more than three days next before the first day of the term of said court, and the sheriff shall obey such order accordingly, and shall endorse on such warrant of commitment, the reason of change of custody, and shall deliver such warrant, with the body of the prisoner, to the keeper of the jail of the proper county, who shall receive the same, and give to the sheriff a receipt therefor, and shall take charge of, and keep the prisoner, in the same manner as if he had originally been committed to his custody : *Provided*, there shall be but one change of *venue* in any criminal case.

Sheriff's
duty.

SEC. 3. When any judge shall award a change of *venue*, in vacation, in any cause, civil or criminal, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit, together with an order in writing, ordering and directing the change of *venue*, and such clerk shall file the same in his office, and shall make out a copy thereof, and a full transcript of the record and proceedings in such cause, and shall certify and transmit the same to the proper court, together with all papers filed in the cause, and appertaining or forming part of the record, including, in criminal cases, the indictment and recognizance of the party, and all witnesses ; and the clerk of the court, to which such cause is certified, shall file the same ; and the cause shall be docketed, by such clerk, and shall be proceeded in and determined by the court, in all things as well before and after judgment as if it had originated therein.

Judges du-
ty award-
ing a
change in
vacation.

Clerk's
duty.

SEC. 4. When any change of *venue* shall be granted in term time, the like proceedings shall be had, and duties performed by the clerks and sheriffs respectively, as in the preceding section : *Provided*, no change of *venue* shall be granted, in any criminal case, until after indictment found.

Clerk and
sheriff's
duty.

Proviso.

SEC. 5. The expenses attending a change of *venue*, in a civil case, shall be taxed by the clerk of the court from which the cause is certified, according to the rates established by law, for like services, and shall be paid by the petitioner, and not taken as part of the costs in the suit ; and if the petitioner shall neglect or refuse to pay the same to such clerk within fifteen days after the change of *venue* is awarded, such clerk may make out a fee bill against such petitioner and his security for costs, (if any,) and deliver the same to any sheriff of any county in this state, who shall levy and collect the amount of such fee bill, and twenty per cent. thereon, for the use and benefit of such clerk, in the same manner as on executions ; and such sheriff shall be entitled to like fees as on execution : *Provided*, that where the *venue* is changed without application from either party, the costs of such change shall abide the event of the suit.

Expenses
of change
how paid.

SEC. 6. When the *venue* shall be changed in any criminal case, the parties, witnesses, and all others who may have entered into recognizances, to attend the trial of such cause, having notice of the change of *venue*, shall be, and are hereby required to attend, at the time and place the trial is to be had, according to such

Witnesses
to attend,
&c.

change, and a failure to do so shall work a forfeiture of the recognition.

People's witnesses recognized to appear.
SEC. 7. When the venue is changed in term time, in a criminal case, the attorney general or circuit attorney shall have all witnesses on the part of the prosecution, recognized to appear at the court on the first day thereof when the trial is to be had.

After conviction, prisoner to be returned to the county where the crime was committed.
SEC. 8. In all cases where a change of venue shall be ordered in a criminal case, if the defendant shall be convicted, and imprisonment shall be a part of the judgment, the sheriff of the county where such conviction shall be had, shall immediately take such prisoner and convey him to the county where the crime shall have been committed, and deliver him to the sheriff thereof, and take his receipt therefor, who shall retain him in custody, according to the judgment of said court; and all costs and charges incurred in removing any prisoner as aforesaid, shall be allowed and paid out of the county treasury, where the crime shall have been committed, if the defendant be unable to pay the same.

Acts repealed.
SEC. 9. The act entitled "An act directing the mode of changing the venue," approved February 23, 1819, and the act entitled "An act amending the act directing the mode of changing the venue," approved February 3, 1821, be, and the same are hereby repealed.

APPROVED, Jan. 23, 1827.

WABASH RIVER.

In force Feb. 12, 1833.
AN ACT relative to the money appropriated to the improvement of the navigation of the Great Wabash river, by an act approved, January 19, 1829, and for other purposes.

Governor authorized to receive from William Wilson the money appropriated to the improvement of the Great Wabash.
SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the governor of this state be, and he is hereby authorized to receive said money, to be applied to defray the current expenses of the state, from William Wilson, in whose hands the said money is, he having been the person appointed by law to receive said money from the receiver at Vermilion, who is hereby authorized and required to pay over the same. And the governor, so soon as he shall be informed that the state of Indiana has made the appropriation as contemplated by our aforesaid law, shall direct the auditor of public accounts, (who is hereby required to do the same,) to issue his warrant or warrants upon the treasury to the commissioner who is hereby appointed, and who is hereby authorized to receive the same, for the amount so received into the treasury from said Wilson, and for the amount which may be paid into the treasury by the receiver, William Reed, who is hereby authorized and directed to pay the balance due from the sale of the said ten thousand acres to the Wabash, into the treasury: And said warrant or warrants, shall be

paid out of the first moneys received into the treasury after being informed that Indiana has made said appropriation.

SEC. 2. In order to carry into effect the aforesaid act making said appropriation for the improvement of the navigation of the Great Wabash river, Samuel Mundy is hereby appointed a commissioner, with full power and authority to disburse the same, in the manner hereinafter described.
Commissioner appointed to disburse the same, for the purpose of effecting said improvement.

SEC. 3. The said Samuel Mundy shall, before entering upon his duties as commissioner, enter into a bond, with good and sufficient securities, to be approved by the circuit judge who may preside in the county of Wabash, in the penal sum of eighteen thousand dollars, payable to the governor of the state for the use, and to be applied to the improvement of the Great Wabash river, as the fund is which he is hereby appointed to disburse; conditioned that he will faithfully and honestly apply and disburse all moneys which he may receive, or that may come into his hands for the objects and purposes aforesaid: which bond, being so executed and approved, shall be filed in the office of secretary of state, and in case of death, omission to give bond in a reasonable time, resignation, or from any other cause, the office should become vacant, the governor shall appoint a commissioner, who shall give bond as herein required.
Shall give bond to be approved of by the judge of the circuit court.

SEC. 4. The said William Wilson is hereby authorized to retain, on paying over said money into the treasury, two per cent. upon the amount which he may have received from the receiver of the Vermilion saline reserve, as a compensation for his trouble, responsibility, and expenses incurred.
William Wilson authorized to retain two per cent. out of said money.

SEC. 5. The said commissioner shall commence with the obstructions nearest the mouth of said river, and so on up; and by removing snags, making wing dams, clearing out rock, or otherwise, as he may deem most advisable, proceed so to remove the difficulties or obstructions as to make the same navigable for all kinds of boats.
Commissioner to commence with obstructions nearest the mouth of said river.

SEC. 6. It shall be the duty of said commissioner to keep suitable bound books, in which he shall keep his accounts, and statements of money received and paid out, and a concise record of all his proceedings; all important contracts which he may make, shall be reduced to writing, and in letting jobs, or parts of the work, he shall give notice of the time and place, thus affording an opportunity for competition; in making his disbursements, he shall take receipts, witnessed by one or more persons, and at each session of the circuit court of Wabash county, he shall present all his books and vouchers for inspection and settlement by said court; and the clerk of said court shall annually make out a statement of said accounts and transmit it to the governor.
Shall keep books of accounts.

SEC. 7. Said commissioner shall receive for his services the sum of two dollars per day for each day necessarily engaged in the above work, in conjunction with commissioners on the part of the state of Indiana, to be paid out of the aforesaid fund.
Compensation.

SEC. 8. That nothing in this act contained shall be so construed as to authorize the auditor of public accounts to draw his warrant or warrants upon the treasury for any money or moneys to be applied to the improvement of the navigation of the Great Wabash

river, as is herein contemplated : *Unless*, the state of Indiana shall have appropriated an equivalent sum to that appropriated by the state of Illinois, on or before the 4th March, A. D. 1834, to be applied in conjunction with the moneys herein appropriated.

APPROVED, Feb 12, 1833.

WILLS.

*In force
July 1,
1829.*

AN ACT relative to Wills and Testaments, Executors and Administrators, and the Settlement of Estates.

*Who may
make will.*

SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That every person aged twenty-one years, if a male, or eighteen years, if a female, or upwards, and not married, being of sound mind and memory, shall have power to devise all the estate, right, title, and interest, in possession, reversion, or remainder, which he or she hath, or at the time of his or her death shall have, of, in, and to any lands, tenements, hereditaments, annuities, or rents, charged upon, or issuing out of them ; or goods and chattels, and personal estate of every description whatsoever, by will or testament : all persons of the age of seventeen years, and of sound mind and memory, married women excepted, shall have power to dispose of their personal estate, by will or testament : and married women shall have power to dispose of their separate estate, both real and personal, by will or testament, in the same manner as other persons.

*To be re-
duced to
writing
and attested*

SEC. 2. All wills, testaments, and codicils, by which any lands, tenements, hereditaments, annuities, rents, or goods and chattels are devised, shall be reduced to writing, and signed by the testator or testatrix ; or by some person in his or her presence, and by his or her direction ; and attested in the presence of the testator or testatrix, by two or more credible witnesses ; two of whom, declaring on oath or affirmation, before the court of probate for the proper county, that they were present and saw the testator or testatrix sign said will, testament, or codicil, in their presence ; or acknowledged the same to be his or her act and deed ; and that they believed the testator or testatrix to be of sound mind and memory, at the time of signing or acknowledging the same, shall be sufficient proof of the execution of said will, testament, or codicil, to admit the same to record : *Provided*, That no proof of fraud, compulsion, or other improper conduct be exhibited, which, in the opinion of the court of probate, shall be deemed sufficient to invalidate or destroy the same ; and every will, testament, or codicil, when thus proven to the satisfaction of the court of probate, shall be recorded by the judge thereof, in a book to be provided by him for that purpose, and shall be good and available in law for the granting, conveying, and assuring the lands, tenements, and hereditaments, annuities, rents, goods and chattels therein, and thereby given, granted, and bequeathed.

*Proviso
against
fraud.*

*Will to be
recorded in
the court of
probate.*

SEC. 3. It shall be the duty of each and every witness to any will, testament, or codicil, made and executed in this state, as aforesaid, to be and appear before the court of probate on the regular day for the probate of such will, testament, or codicil, to testify of and concerning the execution and validity of the same ; and the said court of probate shall have power and authority to attach, and punish by fine and imprisonment, or either, any witness who shall, without a reasonable excuse, fail to appear when duly summoned for the purpose aforesaid : *Provided*, The said punishment by imprisonment shall in no case exceed the space of twenty days ; nor shall a greater fine be assessed for any such default, than the sum of fifty dollars.

*Witnesses
to appear.*

*Failing to
do so court
may punish
by fine and
imprison-
ment.*

SEC. 4. When any will, testament, or codicil shall be produced to the court of probate, for probate of the same, and any witness attesting such will, testament, or codicil, shall reside without the limits of this state, it shall be lawful for the judge of probate to issue a *dedimus potestatem*, or commission, annexed to such will, testament, or codicil, directed to some judge, justice of the peace, mayor, or other chief magistrate of the city, town, corporation, or county where such witness may be found, authorizing the taking and certifying of his or her attestation in due form of law. And if the person to whom any such commission shall be directed, shall certify, in the manner that such acts are usually authenticated, that the witness personally appeared before him, and made oath or affirmation that the testator or testatrix signed and published the writing annexed to such commission, as his or her last will and testament ; or that some other person signed it by his or her direction ; that he or she was of sound mind and memory ; and that he or she subscribed his or her name as a witness thereto, in the presence of the testator or testatrix, and at his or her request ; such oath or affirmation shall have the same operation, and the will shall be admitted to probate in like manner as if such oath or affirmation had been made in the court of probate from whence such commission issued.

*Witness re-
siding out
of the state,
court may
issue a
dedimus.*

SEC. 5. When any will, testament, or codicil shall be exhibited in the court of probate, for probate thereof, as aforesaid, it shall be the duty of the court to receive probate of the same without delay ; and to grant letters testamentary thereon to the person or persons entitled, and to do all other needful acts, to enable the parties concerned to make settlement of the estate at as early a day as shall be consistent with the rights of the respective persons interested therein : *Provided, however*, That if any person interested shall, within five years after the probate of any such will, testament, or codicil, in the court of probate, as aforesaid, appear, and, by his or her bill in chancery, contest the validity of the same, an issue at law shall be made up, whether the writing produced be the will of the testator or testatrix or not ; which shall be tried by a jury in the circuit court of the county wherein such will, testament, or codicil shall have been proven and recorded, as aforesaid, according to the practice in our courts of chancery in similar cases ; but if no such person shall appear within the time aforesaid, the probate, as aforesaid, shall be forever binding and conclusive on all the parties concerned, saving to infants, femmes covert, persons absent from

*Will to be
admitted to
probate.*

*May be
contested
within five
years*

the State, or *non compos mentis*, the like period after the removal of their respective disabilities. And in all such trials by jury, as aforesaid, the certificate of the oath of the witness at the time of the first probate, shall be admitted as evidence, and to have such weight as the jury shall think it may deserve.

Hand writing of any deceased or absent witness may be proved.

SEC. 6. In all cases where any one or more of the witnesses to any will, testament, or codicil as aforesaid, shall die or remove to some distant country, unknown to the parties concerned, so that his or her testimony cannot be procured, it shall be lawful for the judge of probate, or other court having jurisdiction of the subject matter, to admit proof of the hand writing of any such deceased or absent witness, as aforesaid, and such other secondary evidence as is admissible in courts of justice to establish written contracts, generally in similar cases; and may thereupon proceed to record the same, as though such will, testament, or codicil had been proved by such subscribing witness or witnesses, in his, her, or their proper persons.

Wills made out of this state may be admitted to record.

SEC. 7. All wills, testaments, and codicils, or authenticated copies thereof, proven according to the laws of any of the United States, or the territories thereof, or of any country out of the limits of the United States, and touching or concerning estates within this state, accompanied with a certificate of the proper officer or officers that said will, testament, codicil, or copy thereof was duly executed, and proved, agreeably to the laws and usages of that state or country in which the same was executed, shall be recorded, as aforesaid, and shall be good and available in law, in like manner as wills made and executed in this state.

Nuncupative wills.

SEC. 8. A nuncupative will shall be good and available in law for the conveyance of personal property thereby bequeathed, if committed to writing within twenty days, and proven before the court of probate by two or more credible, disinterested witnesses, who were present at the speaking and publishing thereof, who shall declare on oath or affirmation, that they were present and heard the testator pronounce the said words, and that they believed him to be of sound mind and memory; and that he or she did at the same time desire the persons present, or some of them, to bear witness that such was his or her will, or words to that effect, and that such will was made in the time of the last sickness of the testator or testatrix: and it being also proven by two disinterested witnesses, other than those hereinbefore mentioned, that the said will was committed to writing within ten days after the death of the testator or testatrix; and no proof of fraud, compulsion, or other improper conduct be exhibited, which, in the opinion of said court, shall be sufficient to invalidate or destroy the same; and all such wills, when proven and authenticated, as aforesaid, shall be recorded by the judge of probate in like manner as other wills are directed to be recorded by this act: *Provided*, that no letters testamentary shall be granted on such will until the expiration of sixty days after the death of the testator or testatrix.

When proven and authenticated, to be recorded. And letters testamentary granted after sixty days.

Citation to be issued to the heirs, &c., if residing in the county;

SEC. 9. In all cases where a nuncupative will shall be proved and recorded as aforesaid, the court of probate shall issue a citation to the heirs and legal representatives of the testator or testatrix, if they reside in the county; if not, then said court shall cause

an advertisement to be inserted in some one of the newspapers printed in this state, notifying the said heirs and legal representatives of the testator or testatrix at what time and place letters testamentary will be granted upon such will, requiring them and each of them to appear and shew cause, if any they have, why such letters testamentary should not be granted: and if no sufficient cause be shewn, letters shall be granted thereon as in other cases.

if not, to be notified by advertisement.

SEC. 10. If any beneficial devise, legacy, or interest shall be made or given, in any will, testament, or codicil, to any person subscribing such will, testament, or codicil, as a witness to the execution thereof, such devise, legacy, or interest shall, as to such subscribing witness, and all persons claiming under him, be null and void, unless such will, testament, or codicil be otherwise duly attested by a sufficient number of witnesses exclusive of such person, according to this act; and he or she shall be compellable to appear and give testimony on the residue of such will, testament, or codicil, in like manner as if no such devise or bequest had been made. But if such witness would have been entitled to any share of the testator's estate in case the will, testament, or codicil was not established, then so much of such share shall be saved to such witness as shall not exceed the value of the said devise or bequest made to him or her, as aforesaid.

When a subscribing witness is a devisee, &c.

SEC. 11. In no case hereafter within this state where any testator or testatrix shall, by his or her will, appoint his or her debtor to be his or her executor or executrix, shall such appointment operate as a release or extinguishment of any debt due from such executor or executrix, to such testator or testatrix; unless the testator or testatrix shall, in such will, expressly declare his or her intention to devise, bequeath, or release such debt; nor even in that case, unless the estate of such testator or testatrix is sufficient to discharge the whole of his or her just debts, over and above the debt due from such executor or executrix.

If a person indebted to the estate be an executor, such appointment not to operate as a release.

SEC. 12. If, after making a last will and testament, a child or children shall be born to any testator or testatrix, and no provision be made in such will for such child or children, the will shall not on that account be revoked; but unless it shall appear by such will, that it was the intention of the testator or testatrix, to disinherit such child or children, the devises and legacies by such will granted and given, shall be abated in equal proportions, to raise a portion for such child or children, equal to that which such child or children would have been entitled to receive out of the estate of such testator or testatrix, if he or she had died intestate.

Children born after will is made

SEC. 13. Whenever a devisee or legatee, in any last will and testament, being a child, or grandchild of the testator or testatrix, shall die before such testator or testatrix, and no provision shall be made for such contingency, the issue, if any there be, of such devisee or legatee shall take the estate devised or bequeathed, as the devisee or legatee would have done had he or she survived the testator or testatrix; and if there be no such issue at the time of the death of such testator or testatrix, the estate disposed of by such devise or legacy shall be considered and treated in all respects as intestate estate.

Devisee or legatee dying before testator.

SEC. 14. No will, testament, or codicil shall be revoked other-

How will, &c. may be revoked. wise than by burning, canceling, tearing, or obliterating the same by the testator himself, or in his presence, by his direction and consent, or by some other will, testament, or codicil in writing declaring the same, signed by the testator or testatrix, in the presence of two or more witnesses, and by them attested in his or her presence : and no words spoken shall revoke or annul any will, testament, or codicil in writing, executed as aforesaid, in due form of law.

Jurisdiction of courts of probate. SEC. 15. The courts of probate in each county in this state shall have jurisdiction and authority to hear and determine all causes, matters, and controversies testamentary, which shall be brought before them, touching the proof of wills, testaments, and codicils, and may grant probate thereof ; and shall hear and determine the right of administration of estates of persons dying intestate ; and to do all other things touching the granting of letters testamentary, and of administration, and the settlement.

Authenticated copies of wills to be admitted as evidence. SEC. 16. All original wills, after probate thereof, shall be recorded, and remain in the office of the judge of probate of the proper county, and authenticated copies thereof, certified under the hand and seal of the said judge, shall be admitted as evidence in any court of law or equity in this state.

In what county to be proved. SEC. 17. If any testator or testatrix shall have a mansion-house, or known place of residence, his or her will shall be proved in the court of probate of the county wherein such mansion-house or place of residence shall be : if he or she has no place of residence, and lands be devised in his or her will, it shall be proved in the court of probate of the county wherein the lands lie, or in one of them, where there shall be land in several different counties ; and if he or she have no such known place of residence, and there be no lands devised in such will, the same may be proved either in the county where the testator or testatrix shall have died, or that wherein his or her estate, or the greater part thereof shall lie.

Court may compel production of will. SEC. 18. Any person or persons who may have in his or her possession, any last will or testament of another for safe keeping, or otherwise, shall immediately upon the death of the testator or testatrix, deliver up the said will to the court of probate of the proper county, and upon a failure or refusal so to do, the court of probate may issue attachments, and compel the production of the same ; and the person or persons thus withholding any such will, testament, or codicil, as aforesaid, shall forfeit and pay twenty dollars per month from the time the same shall be thus wrongfully withheld, to be recovered by action of debt for the use of the estate, by any person who will sue for the same, in any court having jurisdiction thereof : and if any person to whom a will, testament, or codicil hath been, or shall be delivered by the party making it, for safe custody, as aforesaid, shall alter or destroy the same without the direction of the said party, or shall wilfully secrete it for the space of six months after the death of the testator or testatrix shall be known to him or her, the person so offending shall, on conviction thereof, be sentenced to such punishment as is, or shall be inflicted by law in cases of larceny.

If executors die, or refuse to SEC. 19. All persons named as executors in any will, testament, or codicil, as aforesaid, shall, after the same shall be proved and

admitted to record as before directed, be entitled to letters testamentary thereon ; and where there shall be no executors named in such will, testament, or codicil, or the executor named therein shall die, refuse to act, or be otherwise disqualified, letters of administration, with the will annexed, shall be granted to such person or persons as may be entitled thereto. In all which cases copies of such wills, testaments, or codicils shall go out with the letters.

SEC. 20. It shall be the duty of the executor or executors of the last will and testament of any person deceased, knowing of his, her, or their being so named or appointed, within thirty days next after the decease of the testator or testatrix, to cause such will to be proved and recorded in the proper county, as aforesaid ; or to present said will and declare his or her refusal to accept of the executorship : and every such executor or executrix, so neglecting his trust and duty as aforesaid, without just excuse for such delay to the satisfaction of the judge of probate, shall forfeit the sum of twenty dollars per month, from and after the expiration of the said term of thirty days, until he shall cause probate of said will to be made, or present the same, as aforesaid, to be recovered by action of debt for the use of the estate, by any person who will sue for the same in any court having jurisdiction thereof.

SEC. 21. Upon the refusal of the executor or executors to administer the estate, or upon qualification as aforesaid, the court of probate shall commit the administration of the estate of the deceased, with a copy of the will annexed, unto the widow, or next of kin to the deceased ; and upon the refusal, neglect, or incapacity to act, may grant such administration to one or more of the principal creditors ; and on their refusal, to such other person or persons as the court shall think fit.

SEC. 22. The executor of an executor shall not, in consequence thereof, be executor of the first testator.

SEC. 23. Persons of the age of seventeen years, of sound mind and memory, may be appointed executors ; but should any person under the age of twenty-one years be appointed executor or executrix, the court of probate shall appoint some competent person to manage and control the estate, under the direction of the court, until such executor or executrix appointed by the will shall attain the full age of twenty-one years ; and all such persons appointed to take charge of the estate during the minority of any such executor or executrix shall, for the time being, give bond with security as in other cases.

SEC. 24. The power of the executor or executors over the testator's estate, before probate of the will and obtaining letters testamentary, shall extend to the burial of the deceased, the payment of necessary funeral charges, and the taking care of the estate ; but in all such cases, if the will shall be rejected when presented for probate, and such executor thereby never qualify, he shall in no wise be liable as an executor of his own wrong, unless upon refusal to deliver up the estate to the person or persons authorized to receive the same : *Provided*, that this section shall not be construed to exempt any such person claiming to be executor as aforesaid, for any waste or misapplication of such estate.

SEC. 25. Where two or more executors are appointed in and

act, letters of administration to be granted.

In what time will to be proved.

Penalty for neglect.

To whom administration may be granted.

Executor of an executor

Who may be executors

Power of executor before probate.

If one executor die, &c. letters testamentary to be granted to the other.

Oath to be taken by executor or administrator.

by the same will, and one or more of the persons named as such shall die, refuse to take upon himself or herself such executorship, or be otherwise disqualified, letters testamentary shall be granted thereon to the other person or persons so named, not renouncing as aforesaid, and not disqualified.

SEC. 26. Every executor or administrator with the will annexed, at the time of proving the will and granting letters testamentary or of administration as aforesaid, shall take and subscribe before the judge of probate, the following oath, to wit: "I do solemnly swear, (or affirm,) that this writing contains the true last will and testament of the within named A. B., deceased, so far as I know or believe; and that I will well and truly execute the same, by paying first the debts and then the legacies mentioned therein, as far as his goods and chattels will thereunto extend, and the law charge me; and that I will make a true and perfect inventory of all such goods and chattels, rights and credits, as may come to my hands or knowledge, belonging to the estate of the said deceased, and render a fair and just account of my executorship, when thereunto required by law, to the best of my knowledge and abilities, so help me God." Which said oath shall be administered by the judge of probate, and be attached to, and form a part of the probate of said will.

SEC. 27. All executors hereafter to be appointed, unless the testator or testatrix shall otherwise direct in the will, and all administrators with the will annexed, shall, before entering upon the duties of their executorships, and administrations, respectively, enter into bond with good and sufficient security, to be approved by the court of probate, in a sum double the value of the estate, and payable to the people of the state of Illinois, for the use of the parties interested, in the following form, to wit:—

"Know all men by these presents, that we, A. B., C. D., and E. F., of the county of _____ and state of Illinois, are held, and firmly bound unto the people of the state of Illinois, in the penal sum of _____ dollars current money of the United States, which payment well and truly to be made and performed, we, and each of us bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents: Witness our hands and seals, this _____ day of _____ A. D. 18 _____

Bond.

"The condition of the above obligation is such, that if the above bound A. B., executor of the last will and testament of G. H., deceased, (or administrator, with the will annexed, of G. H., deceased, as the case may be,) do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits, lands, tenements, and hereditaments, and the rents and profits issuing out of the same, of the said deceased, which have, or shall come to the hands, possession, or knowledge of the said A. B., or into the possession of any other person for him, and the same so made do exhibit in the court of probate for the said county of _____ as required by law; and also make, and render a fair and just account of his actings and doings, as such executor, (or administrator,) to said court, when thereunto lawfully required, and to well and truly fulfil the duties enjoined upon him in and by the said will; and shall more-

Condition.

over pay, and deliver to the persons entitled thereto, all the legacies and bequests contained in said will, so far as the estate of the said testator will thereunto extend, according to the value thereof, and as the law shall charge him; and shall in general, do all other acts which may from time to time be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue."

Which said bond shall be signed and sealed by the said executor, (or administrator,) and his securities, attested by the judge of probate, and filed in his office.

To be filed in the court of probate

SEC. 28. Where any testator or testatrix shall leave visible estate, more than sufficient to pay all his or her debts, and by will shall direct that his or her executors shall not be obliged to give security, in that case, no security shall be required, unless the court of probate shall see cause from their own knowledge, or the suggestions of creditors, or legatees, to suspect the executors of fraud, or that the personal estate will not be sufficient to discharge all the debts, such court may require security, and the same shall be given before letters testamentary shall be granted, notwithstanding any directions to the contrary in said will.

When executor not obliged to give security.

SEC. 29. If any person named as an executor or executrix, in any last will and testament, shall be, at the time, when administration ought to be granted, under the age of seventeen years, or of unsound mind, or convicted of any crime rendering him or her infamous, or shall be a married woman, letters of administration, or testamentary, (as the case may require,) may be granted, in the same manner as if such person had not been named as such, in such will, unless in the case of a married woman, her husband shall give bond with her, as aforesaid, with two or more sufficient securities, to be filed as aforesaid, for her faithful performance as such executrix; and on all questions touching such disqualification, the court of probate shall receive the like testimony as would be admissible in any court of law or equity, in similar cases.

When executor or executrix disqualified

SEC. 30. During any contest, in relation to the probate of any will, testament, or codicil, before the same shall be recorded, or until a will which may have once existed, but shall be destroyed or concealed, shall be established, and the substance thereof committed to record, with the proof thereupon taken, or during any contest in regard to the right of executorship, or to administer the estate of any person dying either testate or intestate, or whenever any other contingency may happen, which shall be productive of great delay, before letters testamentary or of administration can be issued upon the estate of such testator or intestate, to the person or persons, having legal preference to the same, the court of probate may appoint any person or persons as administrators, to collect and preserve the estate of any such decedent, until probate of his will, or until administration of his estate be granted, taking bond and security for collecting the estate, making an inventory thereof, and safe keeping and delivering up the same when thereunto required by the said court of probate, to the proper executors or administrators, whenever they shall be admitted and qualified as such.

Pending any contest, court may appoint administrators to preserve the estate.

SEC. 31. The form of the letters to be granted, to the person or persons so appointed to collect and preserve the estate of the

Form of letters of

*adminis-
tration.*

decedant, as aforesaid, shall be as follows, viz : " The people of the State of Illinois, to all to whom these presents shall come, greeting :—Know ye, that whereas A. B., late of the county of _____ and state of Illinois, deceased, as it is said, had, at his (or her) decease, personal property within this state the administration whereof cannot be immediately granted to the persons by law entitled thereto, but which, if speedy care be not taken, may be lost, destroyed, or diminished ; to the end therefore, that the same may be preserved for those who shall appear to have a legal right or interest therein, we do hereby request, and authorize C. D., (and E. F., if two shall be appointed,) of the county of _____ and state aforesaid, to collect and secure the said property, wheresoever the same may be in this state, whether it be goods, chattels, debts, or credits, and to make, or cause to be made, a true and perfect inventory thereof, and to exhibit the same, with all convenient speed, to the court of probate of the said county, of _____ together with a reasonable account of his collection, acts and doings in the premises aforesaid. Witness, G. H., judge of probate, in and for the said county of _____ at his office in _____ this _____ day of _____ A. D. 18 _____

[Seal.]

G. H., *Judge of Probate.*

SEC. 32. Before letters of administration to collect shall be granted, as aforesaid, the person or persons so appointed as aforesaid, shall give bond, with good and sufficient security, to be approved by the court of probate, in the following form to wit :

Bond.

" Know all men by these presents, that we, C. D., E. F., and J. K., of the county of _____ and state of Illinois, are held and firmly bound unto the people of the state of Illinois, in the penal sum of _____ dollars, current money of the United States, for the payment of which, well and truly to be made and performed, we bind ourselves, our heirs, executors, administrators, and assigns, jointly, severally, and firmly by these presents : witness our hands and seals, this _____ day of _____ 18 _____. The condition of the above obligation is such, that if the above bounden C. D. shall well and honestly discharge the duties appertaining to his appointment as administrator to collect of the estate of A. B., late of the county of _____ deceased ; and shall make or cause to be made, a true and perfect inventory of all such goods, chattels, debts, and credits of the said deceased, as shall come to his or her possession or knowledge ; and the same in due time return to the office of the judge of probate of the proper county ; and shall also deliver to the person or persons authorized by the said court of probate as executors or administrators to receive the same, all such goods, chattels, and personal estate, as shall come to his or her possession as aforesaid, and shall, in the general, perform such other duties as shall be required of him (or her) by law, then the above obligation to be void ; otherwise to remain in full force and virtue." Which said bond shall be signed and sealed by such administrator, and his (or her) securities, attested by the judge of probate, and filed in his office.

Condition.

SEC. 33. Before any administrator to collect shall enter upon the duties of his appointment as aforesaid, he or she shall take and subscribe the following oath or affirmation, before the judge of

probate, to wit : " I do solemnly swear (or affirm) that I will well and honestly discharge the trust reposed in me as collector, or administrator to collect, of the estate of A. B., deceased, according to the tenor and effect of the letters granted to me by the judge of probate of the said county of _____ to the best of my knowledge and ability, so help me God ;" which said oath shall be reduced to writing, subscribed by the party making it, and filed in the office of the judge of probate before whom the same shall be taken.

SEC. 34. Every collector so appointed, as aforesaid, shall have power to collect the goods, chattels, and debts of the said deceased, according to the tenor of the said letters, and to secure the same at such reasonable and necessary expense as shall be allowed by the court of probate ; and the said court may authorize him or her, immediately after the inventory and appraisement of such estate, to sell such as shall be perishable, or may be injured by delay, and to account for the same ; and for the whole trouble incurred by such collector, the court of probate may allow such commission on the amount of the said personal estate, as shall be actually collected and delivered to the proper executor or administrator as aforesaid, as said court may deem just and reasonable, provided the same shall not exceed six per cent. on the amount stated in such inventory or bill of appraisement, as aforesaid.

*Commission al-
lowed.*

SEC. 35. Every collector appointed as aforesaid, shall have power to commence suits for debts due to the decedant, and to release the same on payment thereof ; and no such suit shall abate by the revocation of the letters of such administrator to collect or collector ; but the same may be prosecuted to a final decision by the executor or executors, administrator or administrators, to whom letters testamentary, or of administration may be granted as aforesaid.

*Power to
sue, &c.*

SEC. 36. On the granting of letters testamentary or of administration, as aforesaid, the power of any such collector as may have been so appointed, shall cease, and it shall be his duty to deliver, on demand, all the property and money of the deceased, which shall have come to his hands or possession, (saving such commission as may be allowed by the judge of probate as aforesaid,) to the person or persons obtaining such letters ; and in case any such collector or administrator shall refuse or neglect to deliver over such property and money to his successor, when legal application shall be made therefor, such person or persons, so neglecting or refusing, shall be liable to pay twenty per cent. over and above the amount of all such property or money as shall come to his hands by virtue of his said administration ; and shall moreover forfeit all claim to any commission for collecting and preserving the estate ; which said twenty per cent. together with all damages which may be sustained by reason of the breach of any bond, which may at any time be given by any such collector, may be sued for and recovered by the person or persons to whom letters testamentary or of administration may be granted as aforesaid, for the use of the estate of such decedant.

*To deliver
property to
successor.*

SEC. 37. All such estate, both real and personal, as is not devised or bequeathed in the last will and testament of any person,

*Penalty for
neglect.**Estate not
devised.*

shall be distributed in the same manner as the estate of an intestate; but in all such cases, the executor or executors, administrator or administrators, with the will annexed, shall have the preference in administering on the same.

Creditor may be a witness.

SEC. 38. If any lands, tenements, or hereditaments, shall be charged with any debt or debts, by any will, testament, or codicil, and the creditor, whose debt is so secured, shall attest the execution of the same, such creditor shall, notwithstanding, be admitted as a witness to the execution thereof.

Devise to wife shall bar dower.

SEC. 39. Every devise of land, or any estate therein, or bequest of personal estate, to the wife of the testator, shall be a bar of her dower in lands, or share of the personal estate, unless it be otherwise expressed in the will, testament, or codicil.

Dower barred after six months.

SEC. 40. A widow shall be debarred of her right of dower in the estate of her deceased husband, in all cases where any provision shall be made for her in the testator's will, as aforesaid, unless within six months after the authentication or probate of the will, she shall deliver or transmit to the court of probate of the proper county, a written renunciation, which may be in the following form, to wit: "I, A. B., widow of C. D., late of the county of _____ and state of _____ do hereby renounce and quit all claim to any bequest or devise made to me by the last will and testament of my said deceased husband, which has been exhibited and proved according to law; and I do elect to take in lieu thereof my dower or legal share of the estate of my said husband." Which said letter of renunciation shall be filed in the office of the judge of probate, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provision which may have been thus made for her in the will of any such testator; and by thus renouncing all claims to a devise or bequest, as aforesaid, such widow shall thereupon be entitled to the one-third part of the real estate of her said deceased husband for life, and one-third part of the personal estate forever, which shall remain after the payment of all just debts and claims against the estate of such testator.

Form of renunciation.

To be filed.

Widow then entitled to one-third of the real and personal estate.

SEC. 41. In all cases where a widow shall renounce all benefit under the will, and the legacies and bequests therein contained to other persons, shall, in consequence thereof, become diminished or increased in amount, quantity, or value, it shall be the duty of the court of probate, upon the settlement of such estate, to abate from, or add to such legacies and bequests in such manner as to equalize the loss sustained, or advantage derived thereby, in a corresponding ratio to the several amounts of such legacies and bequests according to the intrinsic value of each.

If by widow's renunciation legacies be diminished or increased, court to abate from, or add to such legacies.

Widow liable for waste.

SEC. 42. If the widow commit waste in the lands and tenements, or the personal estate of the deceased, she shall be liable to an action by the heir or devisee, or his or her guardian, if of real estate; or by the executor or administrator, if of personal estate; and if she marry a second husband, he shall be answerable with her in damages, for any waste committed by her as aforesaid, before such second marriage, or by the husband himself, after such marriage.

Descents.

SEC. 43. Estates both real and personal, of resident or non-resident proprietors, in this state, dying intestate, or whose estates,

or any part thereof, shall be deemed and taken as intestate estate, and after all just debts and claims against such estates shall be paid as aforesaid, shall descend to and be distributed to his or her children and their descendants, in equal parts; the descendants of a deceased child or grandchild taking the share of their deceased parent in equal parts among them: and when there shall be no children of the intestate, nor descendants of such children, and no widow, then to the parents, brothers, and sisters of the deceased person and their descendants, in equal parts among them; allowing to each of the parents, if living, a child's part, or to the survivor of them, if one be dead, a double portion, and if there be no parent living then to the brothers and sisters of the intestate and their descendants; when there shall be a widow and no child, or children, or descendants of a child, or children of the intestate, then the one-half of the real estate, and the whole of the personal estate shall go to such widow, as her exclusive estate forever; subject to her entire and absolute disposition and control, to be governed in all respects by the same rules and regulations as are or may be provided in cases of estates of femes sole: if there be no children of the intestate, or descendants of such children, and no parents, brothers, or sisters, or descendants of brothers and sisters, and no widow, then such estate shall descend in equal parts to the next of kin to the intestate, in equal degree, computing by the rules of the civil law: and there shall be no representation among collaterals, except with the descendants of the brothers and sisters of the intestate; and in no case shall there be a distinction between the kindred of the whole and the half blood, saving to the widow, in all cases, her dower of one-third part of the real for life, and the one-third part of the personal estate forever.

Widow's exclusive estate.

Widow's dower.

SEC. 44. The widow, in all cases, shall be allowed to have and retain, as her sole and separate property, one bed and bedding, the wearing apparel of herself and family, one milch cow and calf, her saddle and bridle, one horse of the value of forty dollars, household and kitchen furniture sufficient for herself and family, and provisions for the same for one year: Said property shall be retained by the widow, and set apart to her by the executor or administrator, and shall in no case be subject to the payment of the debts of the deceased.

Property to be retained by widow.

And not subject to debts of the deceased.

SEC. 45. Where any of the children of a person dying intestate, or their issue, shall have received from such intestate, in his or her lifetime, any real or personal estate, by way of advancement, and shall desire to come into the partition or distribution of such estate with the other parceners or distributees, such advancement, both of real and personal estate, shall be brought into hotchpot, with the whole estate, real and personal of such intestate; and every person so returning such advancement, as aforesaid, shall, thereupon, be entitled to his or her just proportion of said estate.

Hotchpot—proceedings thereon.

SEC. 46. If any man shall have one or more children, by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgment, be thereby legitimated, and capable in law to inherit and transmit inheritance, as if born in wedlock.

Children born before marriage provided for.

Children of unmarried women to inherit the estate of their deceased mother.

SEC. 47. If any single or unmarried woman, having estate either real or personal, in her own right, shall hereafter die, leaving one or more children, deemed in law illegitimate, such child or children shall not, on that account, be disinherited, but they, and each of them, and their descendants, shall be deemed able and capable in law to take and inherit the estate of their deceased mother, in equal parts among them, to the exclusion of all other persons: *Provided*, That if there shall be no such child or children, or their descendants, then, and in such case, the estate of the intestate shall be governed by the rules of descent, as in other cases where illegitimates are excluded.

Aliens may hold real estate, &c. &c. transmit the same to heirs, &c.

SEC. 48. All foreigners, whether aliens, denizens, or naturalized citizens, may take and hold real and personal estate in this state, either by purchase or descent, and alienate and transmit the same to their heirs or assigns, whether such heirs or assigns be citizens of the United States or not, in the same manner as natural born citizens of the United States, or of this state, may or can do; and the children, or next of kin of any such person dying intestate, and leaving estate either real or personal, in this state, whether such children or kindred be citizens of the United States or not, shall be deemed and taken to come within the rule of descents herein before described; and shall inherit such estate accordingly, saving to the widow of such alien, denizen, or naturalized citizen, in all cases, such dower, provision, and privileges as is, or may be allowed by law in other cases.

Equitable estates, &c. subject to dower.

SEC. 49. Equitable estates shall be subject to the widow's dower, and all real estate of every description contracted for by the husband in his lifetime, the title to which may be completed after his decease.

Posthumous children of persons dying intestate.

SEC. 50. In all cases where any person shall die intestate, leaving real or personal estate in this state, and a child or children, commonly called posthumous children, shall be born unto him after his decease, within the usual time prescribed by law, such child or children shall come in for their just proportion of said estate, in all respects as though he, she, or they had been born in the lifetime of the intestate.

Relations not applying, administration may be granted to creditors.

SEC. 51. Administration shall be granted to the husband, upon the goods and chattels of his wife, and to the widow, or next of kin to the intestate or some of them, if they will accept the same, and are not disqualified; but in all cases the widow shall have the preference, but if no widow, or other relative of the intestate, shall apply within sixty days from the death of such intestate, the court of probate may grant administration to any creditor or creditors who shall apply for the same; and in case no such application be made by any creditor or creditors, within fifteen days next ensuing the lapse of the said term of sixty days as aforesaid, administration may be granted to any person or persons whom the judge of probate may think will best manage the estate; and in all cases where such intestate shall have been a non-resident, or without a widow, next of kin, or creditors in this state, but having property within the state, administration shall be granted to the public administrator of the proper county, and to no other person: *Provided*, That no administration shall in any case be granted until satisfactory proof be

Non-resident intestates, administration to be granted to public administrator

made before the court of probate, to whom application for that purpose shall be made, that the person on whose estate letters of administration are requested, is dead, and died intestate so far as they have knowledge and believe.

SEC. 52. The governor of this state shall nominate, and by and with the advice and consent of the senate, appoint in each county in this state, where such appointments have not already been made, or as often as any vacancies may occur in the appointments which have heretofore been made under the existing laws, a suitable person, to be known by the name of the public administrator, for such counties respectively, whose office, power, and duties shall be prescribed by law.

Governor to nominate public adm'rs.

SEC. 53. That whenever any person shall die intestate in any county in this state, or when any non-resident shall die intestate, leaving goods and chattels, right and credits, or either, in this state, and no widow, or next of kin, or creditor or creditors, shall be living within this state, administration of the goods and chattels, rights and credits of such intestate, shall be granted to the public administrator of the county in which such intestate died, or in which the goods and chattels, rights, credits, and effects shall be found, in case such intestate shall have been a non-resident, and his successors in office.

In what cases administration shall be granted to public administrator

SEC. 54. Each and every public administrator, who may at any time be appointed as aforesaid, shall, before entering upon the duties of his office, take and subscribe the following oath, to wit: "I, A. B., public administrator in and for the county of _____ and state of Illinois, do solemnly swear, (or affirm,) that I will well and truly perform all such duties as may be required of me by law, as such administrator, to the best of my knowledge and abilities, so help me God." Which said oath shall be taken before the judge of probate of the proper county, reduced to writing and subscribed by the public administrator, and filed in the office of the said judge.

Oath of public administrator.

SEC. 55. It shall also be the duty of any such public administrator as aforesaid, before entering upon the duties of his office as aforesaid, to enter into bond, with good and sufficient security, to be approved by the judge of probate, in the penal sum of five thousand dollars, conditioned for the due administration according to law, of all such goods and chattels, right, credits, and assets, as may belong or appertain to the several estates upon which administration may be granted to him as aforesaid, which said bond shall be in the following form, to wit: "Know all men by these presents, that we, A. B., C. D. and E. F., of the county of _____ and state of Illinois, are held and firmly bound unto the people of the state of Illinois, in the penal sum of five thousand dollars, current money of the United States, which payment well and truly to be made and performed, we, and each of us, bind ourselves, our heirs, executors, administrators, and assigns, jointly, severally, and firmly, by these presents; as witness our hands and seals, this _____ day of _____ A. D. 18____. The condition of the above obligation is such, that whereas the said A. B. has been appointed public administrator in and for the county of _____; Now, if he, the said A. B., as such public administrator, shall well and truly adminis-

Amended: See act of March 1, 1833.

Bond.

ter all such goods; chattels, rights, credits, and assets, as shall come to his hands or possession, or to the possession of any other person for him, and which may belong to the estate or estates of any person or persons upon which administration may at any time be granted to him by the court of probate of the said county of and to make or cause to be made, a true and perfect inventory of the goods, chattels, rights, credits, and assets of all such deceased persons, the administration of whose estates shall be committed to him as aforesaid; and the same so made, doth exhibit in the said court of probate, when he shall, thereunto be required by law; and to make and render a just and true account of all his actings and doings as such, in each separate estate, to the court of probate of the proper county, when required so to do; and shall in general, do and perform all such other duties as may, from time to time, be required of him by law, then the above obligation to be void, otherwise to remain in full force and virtue." Which said bond shall be signed and sealed by the said public administrator and his securities, and attested by the judge of probate, and filed in his office.

Condition.

Adminis-
tration may
be revoked.

On applica-
tion to the
court within
6 months.

Balance of
intestate's
estate.

Amount
thereof,
with other
particulars,
to be pub-
lished.

Not
claimed
within 6
months to
be paid in-
to county
treasury.

SEC. 56. In all cases where administration shall have been granted to any public administrator, as aforesaid, and it shall afterwards appear that there is, or are, a widow, or next of kin, or creditor or creditors of the deceased, entitled to the preference of administration by this act, it shall be the duty of the court of probate to revoke the letters granted to such public administrator, and to grant the same to such widow, next of kin, creditor or creditors, as shall or may be entitled thereto: *Provided*, That application shall be made to the court of probate of the proper county, by such person or persons within six months after letters shall have been granted to the public administrator as aforesaid; saving to such administrator, in all cases, all such sum or sums of money as may be due to him from such estate on account of commission and expenses, due to, and incurred by him, in the management of said estate.

SEC. 57. If any balance of any such intestate's estate as may at any time be committed to any public administrator, as aforesaid, shall remain in the hands of such administrator, after all just debts and charges against such estate shall have been fully paid, which shall have come to the knowledge of such public administrator, for two years after the administration of such estate shall have been committed to him as aforesaid, such administrator shall cause the amount thereof, with the name of the intestate, the time and place of his or her decease, to be published in some one of the public newspapers printed in this state, for eight weeks successively, notifying all persons having claims or demands against such estate, to exhibit the same, together with the evidence in support thereof, before the court of probate of the proper county, within six months after the date of such notice, or that the same will be forever barred; and if no such claim be presented for payment or distribution within the said time of six months, as aforesaid, such balance shall be paid into the public treasury of said county; and the county shall be answerable for the same, without interest, to such person

or persons as shall thereafter appear to be legally entitled to the same, if any such shall ever appear.

SEC. 58. Upon the death of any person intestate, not leaving a widow, or next of kin, or creditor or creditors, within any county in this state, it shall and may be lawful for the public administrator of the county wherein such person may have died as aforesaid, or wherein the goods and chattels, rights and credits of such decedent shall be, in case such person shall have been a non-resident, to take such measures as he may deem proper for the protecting and securing the property and effects of such intestate from waste or embezzlement, until administration thereon shall be granted to the person entitled thereto, as aforesaid; the expenses whereof shall be paid to such public administrator, upon the allowance of the court of probate, in preference to all other demands against such estate, funeral expenses excepted.

Public
adm'r to
secure the
property of
intestates
from waste.

SEC. 59. All letters testamentary, letters of administration, either with or without the will annexed, letters of administration to collect, and de bonis non; writs, summonses, citations, subpoenas, and all other processes which may at any time be made or issued by the judge of probate, in the discharge of his official duties, shall be made and issued in the name of the people of the state of Illinois, bear test in the name of such judge, and be sealed with the seal of the said court of probate.

Letters of
adminis-
tration, &c.
to issue in
the name of
the people
and with
the seal of
the court.

SEC. 60. Upon every application for letters of administration upon the goods and chattels, rights and credits of any person dying intestate, by any person not entitled to the same, as husband, widow, next of kin, creditor or creditors, or public administrator, the court of probate to which such application shall be made, shall, before the granting of administration to any such applicant or applicants, cause such applicant or applicants to produce satisfactory evidence that the person or persons having the preference have relinquished their prior right thereto: *Provided*, Such application shall be made within the space of seventy-five days next ensuing the death of any such intestate as last aforesaid; but if such application be made after the expiration of seventy-five days, it shall not be necessary to make such proof; and the judge of probate may proceed to grant letters to such applicant or applicants, or any other person or persons, as he may think fit.

Before
granting
adm'r in
certain
cases, evi-
dence to be
produced.

If applica-
tion made
within sev-
enty-five
days.

SEC. 61. All letters testamentary to be hereafter issued to executors under this law, shall be in the following form, to wit:

Form of
letters tes-
tamentary.

STATE OF ILLINOIS, }
COUNTY OF } Sct.—The people of the state of Illinois, to all to whom these presents shall come, Greeting: Know ye, That whereas A. B., late of the county of _____ and state of _____ died, on or about the _____ day of _____ A. D. 18____, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death, property in this state, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that C. D. has been appointed executor in and by the said last will and testament to execute the same; and to the end that the said property may be preserved for those who shall appear to have a legal right or interest therein, and that said

will may be executed according to the request of the said testator; we do hereby authorize him, the said C. D. as such executor, to collect and secure all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his decease, in whosoever hands or possession the same may be found in this state; and well and truly to perform and fulfil all such duties as may be enjoined upon him by the said will, so far as there shall be property, and the law charge him; and in general, to do and perform all other acts, which now are, or hereafter may be required of him by law. Witness, E. F., judge of probate of the said county of _____ at his office in this day of A. D. 18 ____ [Seal.] E. F., Judge of Probate.

SEC. 62. The form of letters of administration hereafter to be issued in this state shall, as near as may be, be as follows, to wit:

Of letters of administration.

STATE OF ILLINOIS, }
 COUNTY OF _____ }
 Sec.—The people of the state of Illinois, to all to whom these presents shall come, Greeting: Know ye, That whereas, A. B. of the county of _____ and state of _____ died intestate, as it is said, on or about the _____ day of _____ A. D. 18 ____, having at the time of his decease personal property in this state, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint C. D. of the county of _____, and state of Illinois, administrator of all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his decease; with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this state, and in general to do and perform all other acts which now are, or hereafter may be required of him by law. Witness, E. F., judge of probate in and for the said county of _____, at his office in _____, this day of _____ A. D. 18 ____ [Seal.] E. F., Judge of Probate.

And in all cases where letters of administration, with the will annexed, letters of administration *de bonis non* or letters of administration to any public administrator, shall hereafter be issued by any court of probate in this state, the same shall be issued in conformity with the foregoing forms, as nearly as may be, taking care to make the necessary variations, additions, or omissions to suit each particular case.

Oath to be taken by administrator.

SEC. 63. The court of probate shall, in all cases, upon granting administration of the goods and chattels, rights and credits of any person dying intestate, require the administrator or administrators, (public administrators excepted,) to take and subscribe the following oath, to wit: "I do solemnly swear, or affirm, that I will well and truly administer all and singular the goods and chattels, rights, credits, and effects of A. B., deceased, and pay all just claims and charges against his estate, so far as his goods, chattels, and effects shall extend, and the law charge me; and that I will do and perform all other acts required of me by law, to the best of my knowledge and abilities." Which said oath shall be reduced to

writing, subscribed by the person taking the same, before the said judge of probate, and filed in his office.

SEC. 64. Each and every administrator, except as is hereinbefore provided for, shall, before entering upon the duties of his office, enter into bond, with good and sufficient security, to be approved by the judge of probate, in a sum double the value of the estate, and payable to the people of the state of Illinois, for the use of the parties interested, in the following form, to wit:—"Know all men by these presents, that we, A. B., C. D., and E. F., of the county of _____, and state of Illinois, are held and firmly bound unto the people of the state of Illinois, in the penal sum of _____ dollars, current money of the United States, which payment, well and truly to be made and performed, we, and each of us, bind ourselves, our heirs, executors, administrators, and assigns, jointly, severally, and firmly by these presents. Witness our hands and seals, this _____ day of _____, A. D. 18 ____"

Bond.

"The condition of the above obligation is such, that if the said A. B., administrator of all and singular the goods and chattels, rights and credits of J. K., deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods and chattels, rights and credits of the said deceased, which shall come to the hands, possession, or knowledge of him the said A. B., as such administrator, or to the hands of any person or persons for him; and the same so made, do exhibit, or cause to be exhibited, in the court of probate for the said county of _____, agreeably to law, and such goods and chattels, rights and credits, do well and truly administer according to law, and all the rest of the said goods and chattels, rights and credits, which shall be found remaining upon the account of the said administrator, the same being first examined and allowed by the court of probate, shall deliver and pay unto such person or persons, respectively, as may be legally entitled thereto; and further, do make a just and true account of all his actings and doings therein, when thereunto required by the said court; and if it shall hereafter appear that any last will and testament was made by the deceased, and the same be proved in court, and letters testamentary or of administration be obtained thereon, and the said A. B. do, in such case, on being required thereto, render and deliver up the letters of administration, granted to him as aforesaid, and shall in general do and perform all other acts which may at any time be required of him by law, then this obligation to be void, otherwise to remain in full force and virtue." Which said bond shall be signed and sealed by the said administrator and his securities, attested by the judge of probate, and filed in his office. And in all cases where bonds shall be taken from any administrator *de bonis non*, or in any other case where a form shall not be prescribed in this act, the same shall be made, as nearly as may be, in conformity with the form above prescribed, with corresponding variations to suit each particular case.

Condition.

In other cases bonds to be made in same form.

SEC. 65. All bonds which may at any time be given by any executor or executors, administrator or administrators, either with or without the will annexed, or *de bonis non*, to collect, or public administrator, may be put in suit and prosecuted, against all or any one or more of the obligors named therein, in the name of the

Bonds may be put in suit.

people of the state of Illinois, for the use of any person or persons who may have been injured by reason of the neglect or improper conduct of any such executor or administrator, as aforesaid; and such bonds shall not become void on the first recovery thereon, but may be sued upon from time to time, until the whole penalty shall be recovered: *Provided*, That the person or persons for whose use the same may at any time be prosecuted, shall be liable for all costs which may accrue in the prosecution of the same; and certified copies of all such bonds, under the seal of the court of probate, shall be received as evidence to authorize such recovery in any court of law or equity having jurisdiction thereof in this state.

Certified copies, under seal of the court, to be received as evidence.

Ad'mn. revoked on production of will, and letters testamentary granted.

If will set aside, letters to be repealed, and administration de bonis non granted.

Letters testamentary &c. granted to persons who may become insane, &c. to be revoked.

In other cases may be revoked.

SEC. 67. If at any time after letters of administration have been granted, a will of the deceased shall be produced, and probate thereof granted according to law, such letters of administration shall be revoked and repealed; and letters testamentary or of administration, with the will annexed, shall be granted in the same manner as if the former letters had not been obtained.

SEC. 68. In all cases where a will, testament, or codicil shall have been proved, and letters granted thereon, as aforesaid, and such will shall thereafter be set aside or annulled by due course of law, the letters granted thereon shall be revoked and repealed, and administration *de bonis non* granted of the goods and chattels unadministered.

SEC. 69. The court of probate shall have power to revoke and repeal all letters testamentary or of administration granted to persons who shall become insane, lunatic, or of unsound mind, habitual drunkards, who may be convicted of any infamous crime, who waste or mismanage the estate, or who conduct themselves in such a manner as to endanger their co-executors, co-administrators, or securities; in all which cases the court shall summon the person or persons charged to be in default, or disqualified as aforesaid, to shew cause why such revocation should not be made; and when made, the reasons therefor shall be stated at large upon the record, and other letters granted to the next person or persons who shall according to law be entitled to the same.

SEC. 70. If any executor of any last will or testament, or administrator of an intestate estate, residing out of this state at the time of taking upon himself the execution of such trust, or after having done so, shall remove beyond the limits of this state, and shall refuse or neglect, after due notice from the court of probate, to render his accounts, and make settlement of such estate, with creditors, legatees, or heirs, or their legal representatives, the said court may, in like manner, revoke such letters, and grant other letters thereon to such person or persons as may be entitled to the same, and as to the said court shall seem meet.

SEC. 71. Where the letters of one of several executors or administrators are revoked, or one or more of the executors or administrators shall die, or become disqualified, the court of probate may, in their discretion, join others in their stead or place, and require additional bonds from such new administrator or administrators, or the survivor or survivors, or such as shall not have their powers revoked, shall proceed to manage the estate; and in case the letters of all of them shall be revoked, or all of said executors

In cases of revocation, &c. court may appoint executors, or grant administration to others.

or administrators shall depart this life before final settlement and distribution of the estate shall have been made, administration, with the will annexed, or as the case may require, shall be granted to the persons next entitled thereto; and in all cases where any such executor or administrator shall have his letters revoked, as aforesaid, he shall nevertheless be liable on his bond to such subsequent administrator or administrators, or to any other person or persons aggrieved, for any mismanagement of the estate thus committed to his care, as aforesaid; and such subsequent administrator or administrators may have and maintain actions of trover, debt, detinue, account, and on the case, against such former executor or administrator for all such goods, chattels, debts, and credits as shall have come to the possession of him or her, and which shall be withheld, or may have been wasted, embezzled, or misapplied, and no satisfaction made for the same.

Former executor or administrator nevertheless liable.

SEC. 72. All the provisions in this act relative to an executor or administrator, shall apply and extend to an executrix or administratrix, or executors or administrators, and *vice versa*, unless otherwise expressly provided for; and whenever any party in the singular number, or a male party is mentioned, the rule shall apply to a female, or two or more having a joint interest, so far as the rule can be with propriety applied, and so far as is not otherwise directed.

Application of this act.

SEC. 73. No executor or administrator, or security for an executor or administrator shall be chargeable beyond the assets of the testator or intestate, by reason of any omission or mistake in pleading or false pleading of such executor or administrator.

Ex'rs, &c. not liable for mispleading.

SEC. 74. If any court of probate shall hereafter grant letters testamentary or of administration, of the estate of any person deceased, without taking good security for the same as aforesaid; or if the security so taken shall afterwards become insufficient, and in all cases where such security has been heretofore taken, and now has, or shall hereafter become insufficient as aforesaid, it shall be lawful for the said court, on the application of any person entitled to distribution, a creditor, or otherwise interested in such estate, to require such executor or administrator to give other and sufficient security, and in default thereof, the letters testamentary or of administration shall be revoked, and administration granted to the person entitled to the same, according to the rules herein before prescribed in the case of an administrator *de bonis non*; and all acts done and performed, according to law, by the executor or administrator, whose letters testamentary or of administration may be revoked as aforesaid, prior to such revocation shall be valid and effectual.

When executors, &c. required to give further security.

In default, letters to be revoked.

SEC. 75. When securities for executors or administrators, or their representatives, may conceive themselves in danger of suffering by the mismanagement of such executors or administrators, and petition the court of probate for relief, in writing, setting forth the cause of such apprehension; the said court shall examine such petition, and if the judge thereof shall deem the causes therein stated and set forth, sufficient to entitle such petitioner or petitioners to relief, if true, he shall summon such executor or administrator, to shew cause against such petition, and may thereupon dismiss the

Securities may petition for counter security.

same, or direct such executor or administrator, in his discretion, either to give good counter security to save such petitioner or petitioners harmless, or to give a new bond in the like penalty as the first; and such new bond shall have relation back to the time of granting letters testamentary or of administration, and shall be as effectual in every respect, as if the same had been executed before such letters had been granted; and upon refusal or neglect to give bond de novo, or counter security, as aforesaid, the letters granted to such executor or administrator may be revoked, and letters of administration with the will annexed, or de bonis non, granted thereon as aforesaid.

New bond may be taken.

On refusal or neglect letters to be revoked.

Condition.

SEC. 76. In all cases where a new bond shall be required to be given, by an executor or administrator, as aforesaid, the formal part of the bond shall be as heretofore prescribed, with a condition thereto, in the following form, to wit: "The condition of the above obligation is such, that whereas the above bound A. B., executor of the last will and testament of J. K., deceased, (or administrator of the goods and chattels, rights and credits of J. K., deceased,) has heretofore executed a bond, payable to the people of the state of Illinois, and conditioned for the discharge of his duties as executor, (or administrator,) as aforesaid, which said bond bears date on the day of A. D. 18 : and whereas by an order of the court of probate, made on the day of A. D. 18 other bond and security has been required of the said executor, (or administrator :) now, therefore, if the said executor, (or administrator,) shall well and truly have kept and performed, and shall well and truly keep and perform, the condition of the bond first given as aforesaid, in all respects, according to law, and shall in all respects have performed, and shall continue to perform the duties of his office aforesaid, then this obligation to be void, otherwise to remain in full force and virtue." Which bond shall be signed, sealed, attested, and filed in all other respects as aforesaid.

Inventories how taken and returned.

SEC. 77. In every case wherein letters testamentary, of administration or of collection are granted, it shall be the duty of the executor or administrator to make out a full and perfect inventory of all such real and personal estate, or the proceeds thereof, as shall be committed to his superintendence and management, and as shall come to his hands, possession, or knowledge, whether the same shall consist in lands, tenements, hereditaments, annuities, or rents, or in goods and chattels, and rights and credits, particularly specifying the nature and amount of each, or both, as the case may require, and noting distinctly the amount in money on hand, the nature of each debt due to the deceased, and whether the same be separate, doubtful, or desperate; which said inventory shall be returned to the office of the judge of probate within three months from the date of the said letters testamentary or of administration as aforesaid.

Appraisers appointed.

SEC. 78. On granting any letters testamentary, or of administration as aforesaid, a warrant or warrants shall issue, under the seal of the court of probate, authorizing three persons of discretion, not related to the deceased, nor interested in the administration of the estate, to appraise the goods, chattels, and personal estate of the

Form of warrant.

deceased, known to them, or to be shewn by the executor or administrator, which warrant shall be in the following form, to wit: "The people of the state of Illinois to A. B., C. D., and E. F., of the county of and state of Illinois, greeting: This is to authorize you, jointly, to appraise the goods, chattels, and personal estate of J. K., late of the county of and state deceased, so far as the same shall come to your sight and knowledge, each of you having first taken the oath (or affirmation) hereto annexed; a certificate whereof you are to return, annexed to an appraisement bill of said goods, chattels, and personal estate, by you appraised, in dollars and cents, and in the said bill of appraisement you are to set down in a column or columns, opposite to each article appraised, the value thereof. Witness, L. M., judge of probate for the said county of at his office in this day of A. D. 18.

[Seal.]

L. M., Judge of Probate.

For which said warrant the judge of probate shall receive the sum of twenty-five cents, and no more. And on the death, refusal to act, or neglect of any such appraiser, another warrant, in form as aforesaid, may forthwith issue in its stead.

Fee to judge.

SEC. 79. The appraisers, before they proceed to the appraisement of the estate, shall take the following oath, (or affirmation,) to be annexed to, or endorsed on the warrant of appointment as aforesaid, before any person authorized to administer an oath, viz: "You, and each of you, do solemnly swear, (or affirm,) that you will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of J. K., deceased, so far as the same shall come to your sight and knowledge; and that you will in all respects perform your duty as appraisers to the best of your skill and judgment." After which the said appraisers shall proceed as conveniently as may be to the discharge of their duty, and shall set down each article with the value thereof, in dollars and cents as aforesaid. All the valuations shall be set down on the right hand side of the paper in one or more columns, in figures, opposite to their respective articles of property, and the contents of each column shall be cast up, and set at the foot of each column respectively.

Oath to be taken by appraisers.

Their duty.

SEC. 80. When the bill of appraisement shall be completed, the appraisers shall certify the same under their hands and seals, with a certificate of the oath, (or affirmation,) to be taken by them, thereto annexed; and shall deliver the same into the hands of the executor or administrator, to be by him returned into the office of the judge of probate, within three months from the date of his letters testamentary, or of administration.

Appraisement certified, with certificate of oath annexed.

When to be returned.

SEC. 81. Inventories and bills of appraisement, and authenticated copies thereof, may be given in evidence in any suit, by or against the executor or administrator, but shall not be conclusive for, or against him, if any other testimony be given, that the estate was really worth, or was bona fide sold for more or less than the appraised value thereof.

Inventories, &c. may be given in evidence.

SEC. 82. Whenever personal property of any kind, or assets, shall come to the possession or knowledge of any executor or administrator, which shall not have been mentioned and included

Inventory of further assets how to be returned.

in the inventory and bill of appraisement as aforesaid, an account or inventory of the same shall be returned to the office of the judge of probate, appraised by three disinterested sworn appraisers as aforesaid, within three months after discovery shall be made of the same.

Compensation to appraisers.

SEC. 83. Each and every appraiser appointed under this act, shall be entitled to the sum of seventy-five cents per day for each day's necessary attendance in making all such appraisements and bills thereof, as aforesaid, to be allowed by the judge of probate, and paid upon his order by the executor or administrator, and charged to the account of the estate.

Widow may take her part out of the articles appraised, or the amount thereof in money.

SEC. 84. When the estate of any testator or intestate shall have been appraised, and the same shall be ascertained to be entirely solvent, and free from debt or incumbrance, or where there shall be a sufficiency of money or assets in the hands of the executor to pay such debts, independent of the property mentioned in such inventory and bill of appraisement, it shall be lawful for the widow to make her election, whether she will take that part of the personal estate to which she may be entitled by right of dower, or otherwise, out of the articles mentioned in such bill of appraisement according to the appraised value thereof, or the amount thereof in money, whenever the same shall be sold, and the money collected therefor; or she may take a part in property, and a part in money, as she may prefer. And in all such cases it shall be the duty of the executor or administrator to notify the widow as soon as such appraisement shall be made, and to set apart to her such article or articles of property, not exceeding the amount to which she may be entitled, and as she may prefer or select, within thirty days after written application shall be made for that purpose by such widow: and if any such executor or administrator shall neglect or refuse to comply with the foregoing requisition, when application shall be made for that purpose, he shall forfeit and pay for the use of such widow the sum of twenty dollars per month, for each month's delay to set apart said property so selected, after the said term of thirty days shall have elapsed, to be recovered in the name of the people of the state of Illinois, for the use of such widow, in any court having jurisdiction of the same.

Or part in property, and part in money.

To make application in writing for such property as she may select.

Further inventory to be made from time to time.

SEC. 85. Executors and administrators shall, in addition to the inventory and bill of appraisement required to be made as aforesaid, make a further inventory from time to time, of all moneys, judgments, bonds, promissory notes, open accounts, or other evidences of debts; also, of his titles to estates, both real and personal, as well equitable as legal, specifying the kind, quantity, quality, situation and value of such real estate, by what title held, and from whom purchased, if known, the debts appearing to be due, or to become due to such testator or intestate, the names of the person by whom owing, date of the contracts, and amount of interest accruing on the same, with such other and further description of the said estate, the books, papers, and evidences of title, so as to make the same as full and perfect as possible; which said inventory, when made, shall be filed in the office of the judge of probate, as is required in other cases by this act.

And, filed.

SEC. 86. If any executor or administrator, or other person in-

interested in any estate, shall state upon oath to any court of probate, that they believe that any person has in possession, or has concealed or embezzled any goods, chattels, moneys, or effects, books of account, papers, or any evidences of debt whatever, or titles to land, belonging to any deceased person, the court shall require such person to appear before them by citation, and may examine him or her on oath, touching the same, and if such person shall refuse to answer such proper interrogatories as may be propounded by the court, or person interested as aforesaid, or shall refuse to deliver up such property or effects as aforesaid, upon a requisition being made for that purpose by an order of the said court of probate, such court may commit such person to jail, until he or she shall comply with the order of the court therein.

Court may cite persons to appear and be examined touching the concealment of any goods, &c. On refusal to answer, or deliver up property, court may commit them to jail.

SEC. 87. The books of account of any deceased person shall be subject to the inspection of all persons interested therein.

Accounts subject to inspection.

SEC. 88. Executors and administrators shall be chargeable with so much of the estate, whether real, personal, or mixed, or the proceeds thereof, of their testator or intestate as they, after due and proper diligence, shall recover and receive.

To what extent executors and administrators shall be chargeable.

SEC. 89. In all cases where power is or may be given in any will, to sell and dispose of any real estate, or interest therein, and the same be sold and disposed of in the manner, and by the persons appointed in such will, the sales shall be good and valid; and where one or more executors shall depart this life before such sales be made, the survivor or survivors shall have the same power, and their sales shall be good and valid as though they all joined in such sale.

Sales of real estate under the will to be valid.

SEC. 90. No executor or administrator shall, under any pretense whatever, remove any property whatsoever wherewith such administrator or executor may be charged by virtue of his letters, beyond the limits of this state; and in case any such executor or administrator shall remove such property, it shall be the duty of the judge of probate, forthwith to revoke his letters, and to cause a suit to be instituted, on his bond, against him and his securities, for the use of the persons interested in said estate; and the jury trying such cause shall, on satisfactory evidence of the removal of the property as aforesaid, render a verdict against the offender or offenders and his securities, for the full value thereof, and such other damages as the parties interested may have sustained by reason thereof; and letters of administration on said estate shall issue to the next persons or persons entitled, as in other cases.

If executors, &c. remove property out of the state, letters to be revoked and suit instituted against him.

SEC. 91. The executor or administrator shall, as soon as convenient, after making the inventory and appraisement, as hereinbefore directed, sell at public sale all the personal property, goods and chattels of the testator or intestate, not reserved to the widow as aforesaid, and also excepting specific legacies and bequests, where the estate is sufficient to discharge the debts over and above such specific legacies and bequests upon giving three weeks notice of the time and place of such sale, by at least four advertisements, set up in the most public places in the county where the sale is to be made, or by inserting an advertisement in the nearest and most public newspaper printed in this state to the place of such sale, at least four weeks successively, previous thereto, upon a credit of

Sale of personal property.

Notice to be given.

Proviso. not less than six nor more than twelve months, by taking bond with good security of the purchasers at such sale, *Provided*, That such executor or administrator may make it a part of the condition of such sale, that purchasers under the sum of five dollars shall be paid in hand : *And provided further*, That if any testator shall direct that his estate shall not be sold, the same shall be preserved in kind, and distributed accordingly, unless such sale should become absolutely necessary for the payment of the debts and charges against the estate of such testator.

Crop growing when and how it may be sold

SEC. 92. If any executor or administrator shall be of opinion that it would be of advantage to the estate of the testator or intestate to dispose of the crop growing at the time of his or her decease, the same shall be inventoried, appraised, and sold, at the same time, and in the same manner, as is directed in the preceding section ; but if such executor or administrator shall believe that it would be of more advantage to the estate to go on and finish the same, previous to such sale, he shall be authorized so to do, and the proceeds of such crop, after deducting all necessary expenses for cultivating, gathering, and making sale of the same, shall be assets in the hands of such executor or administrator, and subject to the payment of debts and legacies, and to distribution as aforesaid.

Clerks and crier may be employed

Their compensation.

Sales to be made between 10 A. M. and 5 P. M.

Sale bill to be certified, and returned.

SEC. 93. In all public sales of property, made in pursuance of this act, as aforesaid, the executor or executors, administrator or administrators, may employ the necessary clerks and a crier, who shall be allowed such compensation, not exceeding two dollars per day, as the court of probate may judge reasonable to be paid by such executors or administrators, and charged to the estate. All such sales shall be made between the hours of ten o'clock in the forenoon, and five o'clock in the afternoon of each day ; and any such as shall be made before, or after the time herein limited, shall be void.

SEC. 94. All executors and administrators shall, immediately after making such sales as aforesaid, make, or cause to be made, a bill of the sales of said estate, describing particularly each article of property sold, to whom sold, and at what price ; which sale bill, when thus made, and certified by the clerk of such sale, and the crier thereof, as true and correct, shall be returned into the office of the judge of probate, in the like time as is required in cases of inventories and appraisements.

Persons having claims against dec'd to be notified by advertisement to exhibit the same.

Amended: See act of Feb. 25, 1833.

Proviso.

SEC. 95. It shall be the duty of all executors and administrators, as soon as they are qualified as such, to cause an advertisement to be published in the nearest newspaper printed in this state, for four weeks successively, notifying and requesting all persons having claims against the deceased to exhibit the same to such executor or administrator, or to the court of probate for the proper county, for settlement, within nine months from the date of such advertisement, in order that such executor or administrator may certainly know the number and amount of claims against said estate, preparatory to the liquidation and payment of the same, and also to enable him to ascertain whether the estate be insolvent or not : *Provided*, that if the appraised value of any such estate shall not exceed the sum of one hundred and fifty dollars, the no-

tice aforesaid may be given by putting up advertisements in four of the most public places in the county.

SEC. 96. Any creditor, whose debt or claim against the estate is not due, may nevertheless present the same for allowance and settlement, and shall thereupon be considered as a creditor under this act, and shall receive a dividend of the said testator's estate, after deducting a rebate of interest for what he shall receive on such debt, to be computed from the time of the actual payment thereof, to the time such debt would have become due, according to the tenor and effect of the contract.

SEC. 97. No action shall be maintainable against any executor or administrator, for any debt due from the testator or intestate, until the expiration of one year after the taking out of letters testamentary or of administration, except as is herein excepted ; nor shall any person, suing after that time, recover costs against such executor or administrator, unless a demand be proved before the commencement of such suit ; but in all other cases, both executors and administrators shall be liable to pay costs as other persons.

SEC. 98. When any executor or administrator, whose testator or intestate shall have died seized of any real estate in this state, shall discover or suspect that the personal estate of such testator or intestate is insufficient to pay the just claims against his or her estate, such executor or administrator shall, as soon as conveniently may be, make a just and true account of the said personal estate and debts, as far as he or she can discover the same, and shall make out a petition to the circuit court of the county in which administration shall have been granted, stating therein what real estate the said testator or intestate died seized of, or so much thereof as will be necessary to pay his or her debts as aforesaid, and request the aid of the said court in the premises ; and it shall also be the duty of such administrator or executor, to give at least thirty days notice of the time and place of presenting such petition, by serving a written notice of the same, together with a copy of said account and petition on each of the heirs or their guardians, or devisees of said testator or intestate, or by publishing a notice in the nearest newspaper, for three weeks successively, commencing at least six weeks before the presenting of said petition, of the intention of presenting the same to the circuit court, for the sale of the whole, or so much of the real estate of the said testator or intestate as will be sufficient to pay his or her debts, and requesting all persons interested in said real estate to shew cause why it should not be sold for the purposes aforesaid.

SEC. 99. It shall be the duty of the said circuit court, at the time and place specified in the notice aforesaid, or at such other time as the said court shall appoint, to hear and examine the allegations and proofs of such executor or administrator, and of all such other persons interested in said estate, as may think proper to resist such sale ; and if, upon due examination, the said circuit court shall ascertain that the said personal estate of such testator or intestate is not sufficient for the payment of his or her debts, the said court shall order and direct the whole, if necessary ; but if not, then so much of the said real estate from time to time as

Debt not due may be exhibited.

When action may be maintained against executor or administrator.

When personal estate insufficient, land to be sold.

Petition to the Circuit Court.

Notice thereof.

Circuit Court may order sale of the whole, or a part.

will be sufficient to pay such debts, to be sold as is hereinafter directed; and when a part only of such estate is ordered to be sold, such order shall specify as particularly as may be, the part so ordered to be sold: *Provided, always,* that where any houses and lots, or other real estate are so situated that a part thereof cannot be sold without manifest prejudice to the heirs, or devisees, such court may in its discretion, order the sale of the whole, or such part thereof as shall be necessary for the payment of debts; and the overplus arising from such sale shall be distributed among the heirs and devisees, or such other person or persons as may be entitled thereto.

Proviso, as to houses and lots.

Deed to be made by ex. or adm'r. SEC. 100. All sales of any such real estate directed to be made as aforesaid, shall be made, and conveyances executed for the same by the executor or administrator applying for such order; which said conveyances shall set forth such order at large, and shall be valid and effectual against the heirs and devisees of such testator or intestate and all other persons claiming by, through, or under him, her, or them.

Sale to be at public vendue and between the hours of ten and five.

SEC. 101. No lands or tenements shall be sold by virtue of any such order of the circuit court as aforesaid, unless such sale be at public vendue, and between the hours of ten o'clock in the forenoon and five o'clock of the afternoon of the same day; nor unless the time and place of holding such sale shall have been previously published for the space of six weeks successively, by putting up notices thereof, in at least four of the most public places in the county where such real estate shall be sold; and also by causing a similar notice thereof to be published in the nearest newspaper in this state, nor unless such real estate shall be described with common certainty in the said advertisements: and if any executor or administrator so ordered to make sale of any real estate as aforesaid, shall sell the same contrary to the provisions of this act, he shall forfeit and pay the sum of five hundred dollars, to be recovered by action of debt, in the name of the people of the state of Illinois, for the use of any person interested who may prosecute for the same: *Provided,* That no such offence shall be deemed to affect the validity of such sale: *And provided further,* That it shall be lawful for such executor or administrator to sell the same on a credit of not less than six, nor more than twelve months, by taking bond with good security for the payment of the purchase money, and by taking a mortgage on said land.

Terms of sale.

Inventory, &c. to be filed before sale of real estate.

SEC. 102. No part of the real estate of any testator or intestate shall be ordered to be sold, unless the executor or administrator applying for such order, shall have made and filed an inventory, appraisement bill, and sale bill, in the office of the judge of probate; nor unless such executor or administrator shall have first applied the personal estate, or proceeds thereof, or such part thereof as shall have come to his possession, towards the payment of the debts of the said testator or intestate.

Circuit court to appoint guardians for infant heirs and devisees.

SEC. 103. In all cases where a petition shall be presented for the sale of any real estate, and one or more of the devisees or heirs of the testator or intestate shall be infants, and without a guardian resident in the county in which such petition shall be preferred, the circuit court to which the same shall be presented shall appoint

some discreet person as guardian ad litem, for the purpose of appearing for, and defending the interest of such infant or infants in the proceedings therein.

SEC. 104. Any person or persons claiming to be aggrieved by any judgment, decree or order, for the sale of any such real estate as aforesaid, may appeal from the same to the supreme court of this state: *Provided,* Such appeal be entered during the term in which such judgment, decree, or order shall be made.

Persons aggrieved by any decree, &c. for the sale of real estate may appeal.

SEC. 105. When any real estate shall at any time be ordered to be sold, the moneys arising from such sales shall be received by the executor or administrator applying for such order, and shall be considered as assets in his or her hands for the payment of debts; and shall be applied in the same manner as assets arising from the sale of personal property.

Moneys arising from sales to be assets for the payment of debts.

SEC. 106. In all cases where any testator or intestate now deceased, or shall hereafter die seized of any lands, the payment whereof has not been completed to the United States, and the estate of such decedant is or shall be unable to make complete payment therefor with advantage to such estate, it shall be lawful for the administrator, executor, or other legal representatives of such deceased, to sell or dispose of the certificate or certificates of entry, or further credit of the same, in such manner as they may deem most advisable for the interest of such estate; and the money arising from such sales shall be assets in the hands of such executor or administrator, as in other cases.

Lands purchased of the U. S. and not paid for.

Certificates may be sold.

SEC. 107. But in all cases where the estate of any such testator or intestate shall be solvent, and such lands as aforesaid may be patented without prejudice to the estate, it shall be the duty of the executor or administrator to complete the payment for the same, by relinquishment, or out of the proceeds of the personal property, as the case may require, in the name of the heirs, or legal representatives of the decedant, entitled thereto; and he shall be allowed a credit for the amount of such payments, and all reasonable expenses incurred in making the same, upon final settlement of such estate: *Provided,* That the provisions of this and the preceding section shall, in no wise, interfere with the provisions of any last will or testament as aforesaid.

But if estate solvent, payment may be completed for such lands.

SEC. 108. In all cases where the lands, or certificates of entry or purchase, of any testator or intestate, on which partial payments shall have been made as aforesaid, have or shall hereafter become forfeited to the United States for the non-payment thereof; or where any deposit or deposits, or payments of money by way of entry or purchase of any such lands, or securing the preference of purchase thereof, shall have been made by such testator or intestate, at any of the land offices in this state, and the same have, or shall at any time hereafter, become forfeited to the United States, for the non-payment of the residue, due, or to become due on said lands; and where the congress of the United States has, or shall hereafter make provision for a further extension of credit, or for the repayment of the sums thus forfeited to the payors thereof, or to their legal representatives, either by the issuing of script, granting of lands, or by the actual return of the money thus paid as aforesaid; or shall in any other manner provide for the relief of

If lands or deposits have been forfeited to the U. S.

such purchaser or purchasers, it shall be lawful for the executor or administrator, or the legal representatives of such testator or intestate, to avail themselves of such provision or relief, for the use of the estate, in like manner as such testator or intestate might or could do, if living at the time, and all such sums of money as may be produced by the sale of any such forfeited certificate or deposits, or such script as may be received in lieu thereof, and all such sums as shall be repaid in money as aforesaid, on account of any such forfeitures, shall be considered as assets in the hands of such executor or administrator, and shall be accounted for accordingly.

Ex. or adm. to avail themselves of such relief, as may be afforded by congress.

Proceedings when estate shall be insolvent

SEC. 109. Whenever an estate is found to be insolvent, it shall be so entered of record by the judge of probate; and after such order so made, no action shall be maintained against the executors or administrators, except at the costs of the party suing: but persons entitled shall receive their proportions of said estate, in the manner herein provided for; and whenever the real estate shall be required to be sold for the payment of debts, no suit shall be maintained until the money is received for such real estate, and an order made by said court, directing the executor or administrator to pay out the same, as required in this act, and the court of probate may make all necessary orders to coerce the executor or administrator to make immediate application to the circuit court for the sale of such real estate.

Demands against the estate divided into classes.

SEC. 110. All demands against the estate of any testator or intestate shall be divided into classes in manner following, to wit: 1st. All funeral and other expenses attending the last sickness, shall compose the first class. 2d. All expenses of proving the will, and taking out letters testamentary, or of administration and settlement of the estate, and the physician's bill in the last illness of the deceased, shall compose the second class. 3d. Where any executor, administrator, or guardian has received money as such, his executor or administrator shall pay out of his estate the amount thus received and not accounted for, which shall compose the third class. 4th. All other debts and demands of whatsoever kind, without regard to quality or dignity, which shall be exhibited within two years from the granting of letters as aforesaid, shall compose the fourth and last class. And all demands not exhibited within two years as aforesaid, shall be forever barred, unless such creditor shall find other estate of the deceased, not inventoried or accounted for by the executor or administrator; in which case his claim shall be paid *pro rata*, out of such subsequently discovered estate; saving, however, to *femes covert*, infants, persons of unsound mind, or imprisoned, or beyond the seas, the term of two years after their respective disabilities be removed, to exhibit their claims.

Not exhibited within two years, to be forever barred.

Proviso.

In what manner claims may be exhibited

SEC. 111. The manner of exhibiting claims against the estate of any testator or intestate, may be by serving a notice of such claim on the executors or administrators, or presenting them the account, or filing the account, or a copy thereof, with the judge of probate.

Powers of courts of probate.

SEC. 112. The courts of probate in their respective counties shall have concurrent power with the circuit courts of adjudicating and allowing, or rejecting claims exhibited against estates, not exceeding one hundred dollars; and on all sums above twenty dol-

lars either party may have a jury, and for that purpose shall have power to summon witnesses, to grant orders for taking depositions in the manner prescribed in courts of law, and to make all such other orders in the premises as may be necessary; and persons having claims as aforesaid, upon giving the executor or administrator ten days' notice of the time they intend to present the same to said court, the court, upon examination, shall allow or reject such claims: *Provided*, The court may allow further time for either party to produce other or further evidence in his favor: *Provided*, also, That judgments regularly obtained, and a copy thereof duly certified and filed with the court of probate, shall be taken as duly proven; and all instruments in writing, signed by the testator or intestate, if the hand writing be proven, and nothing be shewn to the contrary, shall be deemed duly proved.

SEC. 113. In no case shall any person making a claim against the estate of any testator or intestate be permitted to prove the same by his or her own oath.

Claim not to be proved by the oath of the party

SEC. 114. All claims and demands against estates, when allowed by the court of probate as aforesaid, shall be classed and paid by the executor or administrator in the manner provided in this act, commencing with the first class; and when the estate is insufficient to pay the whole of the demands, such demands in any one class shall be paid *pro rata* whether the same shall be due by judgment, writing obligatory, or otherwise, except in such cases as shall be herein excepted.

Claims, when allowed, to be classed, and

Paid accordingly.

SEC. 115. When any executor or administrator shall have any demand against his testator or intestate's estate, he shall be required to file his demand with the court of probate, as other persons, and the court shall appoint some discreet person to appear and manage the defence for the estate; and upon a final hearing, said court shall allow said demand, or such part thereof as shall be legally established, or reject the same, as to said court shall appear just. Should an executor or administrator appeal, in such case the court of probate shall appoint some person to defend as aforesaid.

Demand of any executor or administrator to be filed in court of probate.

SEC. 116. The court of probate shall make an entry of all demands allowed against estates, and file and preserve the papers belonging to the same, and shall also class said demands as is required by this act; and when any executor or administrator shall pay any claim before the same is allowed, as aforesaid, said court shall require such executor or administrator to establish the validity of such claim by the like evidence as is required in other cases, before the same is classed and he credited therewith.

Court to make entry of, and class demands.

SEC. 117. The judges of the courts of probate shall provide well bound books, and enter therein the accounts of executors and administrators, so as to make the same a complete record of all accounts allowed, and all settlements of estates made in said court.

To provide books.

SEC. 118. All executors and administrators shall exhibit accounts of their administration for settlement to the court of probate from which the letters testamentary or of administration were obtained, at the first term thereof which shall happen after the expiration of one year after the date of their letters, as aforesaid; and in like manner every twelve months thereafter, or sooner, if

Admn. accounts to be exhibited to the court at the first term after the expiration of one year.

required, until the duties of their administration be fully completed.

When moneys are insufficient to discharge the debts, creditors to be paid pro rata.

SEC. 119. Upon each and every settlement of the accounts of any executor or administrator, as provided by this act, it shall be the duty of the court to ascertain the whole amount of moneys which shall have come into the hands of such executor or administrator, belonging to the estate of the deceased, and the whole amount of debts established against such estate; and if there be not sufficient to pay the whole of the debts, the moneys aforesaid shall be appropriated among the several creditors, pro rata, according to their several rights, as established by this act; and thereupon the court shall make an order, directing such executor or administrator to pay the claims which have been allowed by the court, according to such apportionments; and the court, upon each and every settlement, shall proceed in like manner, until the whole debts be paid, or the assets exhausted.

When personal estate is insufficient, court to prepare an abstract of lands, &c. to be presented to the circuit court.

SEC. 120. Whenever it shall appear that the personal estate of any person deceased is insufficient to discharge the debts of such estate, and there is real estate belonging to the same, the court of probate shall make out such an abstract, from its records, of the debts and credits of such estate, and of the lands owned by such testator or intestate, from the inventory of such estate, whether the title be complete or not; which abstract shall be presented to the circuit court, by the executor or administrator, who may then obtain an order to sell the same in the manner hereinbefore directed; and the proceeds of such sales shall be assets in the hands of such executor or administrator, for the payment of debts, and be subject to the same order by the court of probate in the payment of debts, as other assets.

Land to be sold.

SEC. 121. If any executor or administrator shall fail or refuse to pay over any moneys or dividend to any person entitled thereto, in pursuance of the order of the court of probate, lawfully made, within thirty days after demand made for such moneys or dividend, the the court of probate, upon application made, shall attach such delinquent executor or administrator, and may cause him to be imprisoned until he shall comply with the order aforesaid, or until such delinquent is discharged by due course of law; and moreover, such failure or refusal on the part of such executor or administrator shall be deemed and taken in law to amount to a *devastavit*, and an action upon such executor's or administrator's bond, and against his or their securities, may be forthwith instituted and maintained; and the failure aforesaid to pay such moneys or dividend shall be a sufficient breach to authorize a recovery thereon.

Proceedings against delinquent executors or adm'rs.

SEC. 122. Whenever it shall appear that there are sufficient assets to satisfy all demands against the estate, the court of probate shall order the payment of all legacies mentioned in the will of the testator, the specific legacies being first satisfied.

When assets are sufficient, court to order payment of all legacies.

SEC. 123. Where any heir of an intestate has received money, goods, chattels, or real estate from such intestate, if the amount so received shall be charged to such heir by said intestate, the same shall be taken into computation in making distribution of the estate upon being brought into hotchpot, as aforesaid: *Provided*, That an

Money, &c. before paid to heir, to be taken into account.

heir who has received from the intestate more than his share, shall in no case be required to refund. *Provided*

SEC. 124. Executors and administrators shall not be compelled to pay legatees or distributees until bond and security be given by such legatees or distributees to refund the due proportion of any debt which may afterwards appear against the estate, and the costs attending the recovery thereof; such bond shall be made payable to such executor or administrator, and shall be for his indemnity, and filed in the court of probate. *Bonds to be given by legatees or distributees*

SEC. 125. Where, at any time after the payment of legacies or distributive shares, it shall become necessary that the same or any part thereof be refunded for the payment of debts, it shall be the duty of the court of probate, on application made, to apportion the same among the several legatees or distributees, according to the amount received by them, except the specific legacies, which shall in no case be required to be refunded, unless the residue be insufficient to satisfy such debts; and if any distributee or legatee shall refuse to refund, according to the order of the court of probate, made, as aforesaid, within sixty days thereafter, and upon demand made, such refusal shall be deemed a breach of his bond given to the executor or administrator, as aforesaid, and an action may be instituted thereon to the use of such party entitled; and in all cases where there may be no bond, an action of debt may be maintained against such distributee or legatee, and the order of the court of probate shall be evidence of the demand. *In what cases moneys shall be refunded by legatees or distributees.*

SEC. 126. Where there are two or more executors or administrators of an estate, and any one of them take all or a greater part of such estate, and refuse to pay the debts of the testator or intestate, or refuse to account with the other executors or administrators, in such case the executor or administrator so aggrieved may have his action of account, or suit in equity, against such delinquent executor or administrator, and recover such proportionate share of said estate as shall belong to him; and every executor, being a residuary legatee, may have an action of account, or suit in equity, against his co-executor or co-executors, and recover his part of the estate in his or their hands; and any other legatee may have the like remedy against the executors: *Provided*, That before any action shall be commenced for legacies, as aforesaid, the court of probate shall make an order directing them to be paid. *Action by one adm'r or ex'r against another.*

SEC. 127. Actions of trover, detinue, or replevin, shall survive for and against executors and administrators, and may be maintained in the same manner and with like effect as such actions could be for or against their testator or intestate, if living. *Actions that survive*

SEC. 128. When the mortgagee of any lands or tenements shall die, leaving minor heirs, the executors or administrators of such mortgagee shall be, and they are hereby authorized, on receiving the amount due the estate of such deceased mortgagee, to release to the mortgagor the legal title of the said mortgaged premises; and such deed of release shall be valid. *Mortgagee leaving minor heirs, his executor, &c., to release the legal title.*

SEC. 129. Real estate may be mortgaged or leased by executors or guardians: *Provided*, such mortgage or lease shall not be for a longer term than until the heir entitled to such estate shall attain the age of twenty-one years, if a male, or eighteen years, if a female. *Real estate may be mortgaged or leased by ex'rs or guardians.*

Under the authority of the court of probate.

Ex'r, &c., to give bond.

Moneys so raised to be assets.

Compensation to ex'rs and adm'rs

Action may be maintained against ex'r, adm'r or securities, or both.

Appeals allowed from the court of probate.

Within ninety days from rendition of judgment.

Bill of exceptions.

Transcript of record, &c.

When an appeal shall be taken, court to suspend proceedings.

If judgment affirmed, clerk of cir.

SEC. 130. Before any mortgage or lease shall be made as aforesaid, the executors or guardians shall petition the court of probate for an order authorizing such mortgage or lease to be made, and which the court may grant, if the interests of the estate may require it: *Provided*, That the executor or guardian making application as aforesaid, upon obtaining such order, shall enter into bond with good security, faithfully to apply the moneys to be raised upon such mortgage or lease to the payment of the debts of the testator, or for the benefit of the ward or wards of such guardian: and all moneys so raised shall be assets in the hands of such executor for the payment of debts, and shall be subject to the order of the court of probate in the same manner as other assets, or shall be applied to the use of such ward or wards, where the same shall be received by a guardian as aforesaid.

SEC. 121. Executors and administrators shall be allowed, as a compensation for their trouble, a sum not exceeding six per centum on the whole amount of personal estate, and not exceeding three per cent. on the money arising from the sales or letting of land, with such additional allowances for costs and charges in collecting and defending the claims of the estate, and disposing of the the same as shall be reasonable.

SEC. 132. If any executor or administrator shall fail to comply with the provisions of this act, or shall fail to comply with any or all of the covenants in his bond, an action may be forthwith instituted and maintained upon such bond against the principal or securities, or both; and the failure aforesaid shall be a sufficient breach to authorize a recovery in the same manner as though a *devastavit* had been previously established against such executor or administrator.

SEC. 133. Appeals shall be allowed from all judgments, orders, or decrees of the court of probate to the circuit court, in favor of any person who may consider himself or herself aggrieved by any judgment, order, or decree of the court of probate as aforesaid, and from the circuit court to the supreme court, as in other cases.

SEC. 134. Appeals from the court of probate shall be taken within ninety days from the rendition of the judgment, or order appealed from, and not thereafter. The party appealing shall make out and tender to the judge of probate, within the time aforesaid, a statement in the nature of a bill of exceptions, setting forth each item, opinion, or decision objected to, and the order, judgment or decree of the court thereon, and the judge of probate shall sign and seal the same; and he shall thereupon make out a transcript of the records and proceedings relative to the items, opinions, or decisions so excepted to and appealed from, and transmit the same to the clerk of the circuit court, who shall docket the same.

SEC. 135. When an appeal shall be taken to the circuit court as aforesaid, the court of probate shall suspend all proceedings upon such claim, or matter in controversy, until decision shall be had thereon; the circuit court in all cases of appeal shall proceed *de novo* as to the judgments and orders appealed from; and claims for debts may be tried by a jury as in other cases. Where the judgment of the court of probate shall be affirmed upon such appeal, the clerk of the circuit court shall certify the same to the court of

probate. Where the judgment aforesaid shall be reversed, the circuit court shall proceed to give such judgment as the court of probate ought to have given, and the same shall be certified to the court of probate, and said court shall enter the same upon its records, and shall proceed therein agreeably to the order or decision of the circuit court.

SEC. 136. The party appealing as aforesaid, shall, at the time of taking such appeal, file with the judge of probate a bond with good security; payable to the people of the state, conditioned to prosecute his appeal, and to pay all costs, should the judgment be affirmed; and said bond may be put in suit by and for the use of the party entitled to such costs.

SEC. 137. The courts of probate respectively, shall have power to enforce due observance of all orders, decisions, judgments, and decrees which shall at any time be made in the discharge of their official duties, and may issue attachments for any contempt offered such court, or its process, by any executor, administrator, witness, or other person or persons, and may fine and imprison, or either, all such offenders, in the same manner as the circuit courts may or can do, in all similar cases, except in such cases as have been hereinbefore provided for: *and Provided*, that the fine inflicted in such cases shall in no instance exceed the sum of fifty dollars, nor shall any such imprisonment be extended beyond the term of twenty days.

SEC. 138. For the purpose of enabling the courts of probate respectively to execute the powers vested in them by this act, it shall be the duty of the sheriff of each county in which such courts shall be held, when required by the judge of probate, to attend all regular and special sittings of said court, either by himself or deputy, and to keep and preserve good order in the same; and also to serve and execute all writs of attachment, summonses, subpoenas, citations, notices and other processes, which may at any time be legally issued by such judge of probate, and to make due return thereof. And all such sheriffs shall be entitled to the same fees and compensation as is, or may be allowed for the time being, for the performance of similar services in the circuit courts, to be taxed and allowed by the court of probate, against the county, party liable, or delinquent, (as near as may be applicable,) according to the rules and practice in the circuit courts respectively.

SEC. 139. In all cases where executors and administrators have been heretofore appointed, and who shall not have completed their respective administrations or executorships, before this act takes effect, such executors or administrators shall be deemed to be within the provisions of this act in relation to the revocation of their powers, giving of new or additional bonds, bonds to save securities harmless, and in relation to the payment of debts to creditors, and the remainder of the estate to the distributees, and in relation to the performance of their duties generally, wherever the provisions of this act shall be deemed applicable: and the courts of probate in such cases shall cause the settlements to be made, and the administrations completed according to the rules and regulations herein prescribed without delay: *Provided*, that no executor or administrator shall be liable for any act done or performed by him

court to certify. If reversed, court of probate to proceed agreeably to the decision.

Party appealing to give bond.

Power of court to enforce observance of orders, decisions, &c.

Proviso as to fine, &c.

Sheriff to attend the court when required.

And serve process.

His compensation.

Administrations not completed when this act takes effect, to be deemed within the provisions of it, as far as applicable.

Proviso.

as such, in conformity with the existing laws, or such laws as may be in force at the time this act takes effect.

Laws repealed.

SEC. 140. The act entitled "An act to regulate administrations, and the descent of intestates' estates, and for other purposes," approved March 23, 1819; "An act to authorize executors and administrators to sell real estate in certain cases," approved January 28, 1823; "An act to amend an act entitled an act regulating administrations, and the descent of intestates' estates, and for other purposes," approved February 12, 1823; "An act to authorize the appointment of public administrators," approved January 10, 1825; "An act to authorize executors and administrators to sell real estate in certain cases," approved February 7, 1827; "An act to enable aliens to hold real estate," approved February 7, 1827; and all other laws and acts, or parts of laws and acts, conflicting with any of the provisions of this act, be, and the same are hereby repealed: *Provided*, That no rights acquired under the provisions of any of the acts hereby repealed, shall be construed to be invalidated or be affected by the provisions of this act; and the parties concerned in said rights shall be permitted to prosecute the same, as though this act had never been passed.

Rights saved.

This act to take effect from and after the first day of July next.

APPROVED, January 23, 1829.

In force Feb. 14, 1831.

AN ACT to amend an act, entitled "An act relative to Wills and Testaments, Executors and Administrators, and the settlement of estates."

Jurisdiction of judges of probate extended.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That judges of probate shall have jurisdiction concurrently with the circuit courts, in all cases, without regard to the amount in controversy, when an executor or administrator is a party defendant, and when he must necessarily be sued as such. And when a claim shall be filed, or suit brought, against any such executor or administrator, and it shall appear on trial that such claimant or plaintiff is indebted to such executor or administrator, it shall be lawful for such judge of probate to give judgment therefor, and issue an execution, or any other final process which the circuit court might issue in like cases. And the said court shall have power, before giving judgment against any executor or administrator, to require the claimant to make oath that such claim is just and unpaid: *Provided*, that the amount of such judgment shall not be increased upon the testimony of the claimant.

Execrs and admrs may sue before judge of probate.

SEC. 2. Executors and administrators may sue before the judge of probate, in all cases in which the action of debt or assumpsit will lie, for all sums, demands, or damages, due or claimed to be due, to their testator, intestate, or to themselves in their representative capacity, when the balance claimed to be due does not

exceed one hundred dollars; and the said judge of probate shall proceed, in such cases, in the same mode, and shall have the same powers and fees, as justices of the peace.

SEC. 3. The judges of probate shall make, keep, and preserve complete records of all wills, testaments, and codicils, and the probate thereof, all letters testamentary and of administration, and all bonds taken of executors or administrators, and shall file and preserve the originals of the aforesaid papers, and all inventories, appraisements, sale bills, and other exhibits, presented to and received by said courts, appertaining to the administration and settlements of estates: And shall enter on their order book the amount of all such inventories, appraisements, sale bills, and other exhibits, under a proper heading for easy reference: And shall enter upon their book of record all matters, controversies, and suits, that shall arise for decision or adjudication before them, with the names of the parties, and the judgment or opinion of the court, in order that there may be no difficulty in taking appeals.

Judges of probate to keep records.

File papers

SEC. 4. The judges of probate shall have power to issue all process necessary to enforce the judgments and decrees of said court, which process shall be directed to the sheriff or to any constable of the county. And any sheriff or constable, to whom such process shall be directed, is hereby authorized and required to execute the same, and they shall be entitled to the same fees as are allowed for serving like process issued by a justice of the peace.

May issue process.

Sheriffs & constables to serve process.

SEC. 5. When an inventory shall have been made of the personal estate of any testator or intestate, the widow may relinquish her right to any or all of the specific articles of property allowed to her by the forty-fourth section of the act to which this is an amendment, and take in lieu thereof other personal property, not to exceed in value the article or articles relinquished.

Widow's relinquishment.

SEC. 6. No suit shall be brought against any executor or administrator, for or on account of any claim or demand against the testator or intestate, unless such suit shall be brought within one year next after such executor or administrator shall have settled his accounts with the court of probate.

Suits against exrs and admrs.

SEC. 7. The sixty-sixth section of the act to which this is an amendment, and such other parts of said act as are contrary to this act, are hereby repealed.

Clause repealed.

APPROVED, February 14, 1831.

AN ACT supplementary to an act entitled "An act relative to Wills and Testaments, Executors and Administrators, and the settlement of estates."

In force Feb. 25, 1833.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That judges of probate shall have power, and they are hereby required to revoke letters of administration in all cases where the same have been, or hereafter may be granted to any person, upon the false and fraudulent pre-

Judges of probate may revoke letters of administration in certain cases.

tence of being a creditor of the estate upon which administration has been or may be granted, or upon any other false pretence whatever.

Shall determine all controversies arising under this act.

SEC. 2. In all controversies arising under this act, the judges of probate shall proceed to hear and determine the same; and if it shall appear that such letters were fraudulently obtained by such administrator, the court shall revoke the same, and give judgment against the administrator for all costs of suit, and issue execution therefor, as in other cases.

Shall grant letters of administration to such persons as may be entitled thereto. Property of the widow.

SEC. 3. In all cases where any judge of probate shall hereafter revoke any letters of administration, he shall proceed to grant the same to such person or persons as may be entitled thereto.

SEC. 4. In all cases where the intestate at his death shall leave no property of the description specified to be set apart to the widow, by the several acts heretofore passed relative to wills and testaments, the widow shall be entitled to other property, or the value of the same in money, and it shall be the duty of the administrator or judge of probate, to allow the value of the articles specified by law to be set apart to the widow of any intestate, to be allowed her in money or other personal property, at her election, any law to the contrary notwithstanding.

Adm'r shall file upon some term of the court of probate for settling all claims against the deceased. Notice.

SEC. 5. It shall be the duty of each and every administrator or executor, to fix on a certain term of the court of probate, within nine months from the time of his or her being qualified as such administrator or executor, for the settling and adjusting all claims against such decedant, and give notice thereof in some public newspaper within this state as required by law, and also by putting up a written or printed notice on the door of the court house, and in five other of the most public places in the county, notifying and requesting all persons having claims against said estate, to attend at said term of the probate court, for the purpose of having the same adjusted, said notice to be given at least six weeks previous to said day, when and where such claimant shall produce his or her claim, in writing, and if no objection be made to said claim by the administrator, widow, guardian, heirs, or others interested in said estate, the claimant shall be permitted to swear that such claim is just, and unpaid, or that the same is correct after allowing all just credits, and if objections be made to said claim previous to said claim being sworn to, the account shall be adjudicated as is now required by law. All persons who do not avail themselves of the opportunity of having their claims adjudicated at the said term of the court, shall have power to proceed against the executor or administrator, as is now prescribed by law: *Provided*, That estates shall be answerable for the costs on the claims filed at or before said term, but not after; and *Provided, further*, That no execution shall be issued against any executor, or administrator, for the term of one year, from the date of his or her letters testamentary or of administration.

Claimant permitted to swear to his account.

Adm'r de bonis non.

SEC. 6. The administrator of an executor, or of an administrator, shall enter into a sufficient bond, with approved security, to cover the damages that might accrue by a forfeiture of the same, and shall have power, and he is hereby required to make final settlement of the unsettled estate, under all the liabilities and with all

the privileges of an administrator *de bonis non*, and in all cases of advertisement or notice required of executors or administrators, the notice or advertisement may be made in any newspaper within this state. So much of the ninety-fifth section of the act to which this is a supplement, as requires executors and administrators to cause advertisements to be published in the nearest newspaper in this state, be, and the same is hereby repealed.

Part of a former act repealed.

APPROVED, February 25, 1833.

AN ACT supplemental to an act entitled "An act relative to Wills and Testaments, Executors and Administrators, and the settlement of estates," Approved January 23, 1829.

In force March 1, 1833.

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly*, That in all cases where any person shall die seized or possessed of any real estate, within this state, or having any right or interest therein, and shall have no relative or creditor within this state, or if there be any, who will not administer upon such deceased person's estate, it shall be the duty of the judge of probate, upon the application of any person interested therein, to commit the administration of such estate to the public administrator of the proper county, and such public administrator may be made a party to any suit or proceeding in law or equity, and shall, to all intents and purposes, be liable as the personal representative of such deceased person.

When persons die leaving no heirs, administration of their estate shall be granted to public administrators.

SEC. 2. That so much of the act to which this is a supplement, as requires public administrators, to give bond in the sum of five thousand dollars, be, and the same is hereby repealed; and hereafter it shall be the duty of the judge of probate upon granting letters of administration to public administrators, to require him to give bond as is required of other administrators. And if the public administrator shall neglect or refuse to take out letters of administration, and give bond as aforesaid, within sixty days after it becomes his duty to do so, his office shall be deemed vacant, and upon the certificate of the judge of probate of such fact, the governor shall fill such vacancy.

Act requiring public administrators to give bond repealed.

APPROVED, March 1, 1833.

AN ACT supplemental to "An act relative to Wills and Testaments."

In force June 1, 1835.

WHEREAS, by the act, entitled "An act relative to Wills and Testaments, Executors, Administrators, and the settlement of Estates," no power is given a parent to appoint, by Will and Tes-

ment, a guardian for his child or children ; and whereas, also, the common law recognizes no such power—

Father of sound mind may dispose of the custody of his child during minority or less time. Mother being sole to have the same right. SEC. 1. Be it enacted, therefore, by the people of the State of Illinois, represented in the General Assembly, That every father of sound mind and memory of a child likely to be born, or of any living child, under the age of twenty-one years and unmarried, may, by his deed or last will duly executed, dispose of the custody and tuition of such child during its minority, or for any less time, to any person or persons in possession or remainder ; and every mother of sound mind and memory being sole, may, in like manner, dispose of the custody and tuition of a child living, if a father has made no such disposition, or in any other manner restrained the right of the mother.

Such disposition to vest the person to whom made with rights of guardian. Proviso. SEC. 2. Every such disposition, from the time it shall take effect, shall invest in the person or persons to whom it shall be made, all the rights and powers, and subject him or them to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody or tuition of such minor : Provided, That the rights, powers, duties and obligations of such person or persons may be restrained and regulated by the person making such deed or last will as aforesaid.

Shall have the custody and management of the estate. SEC. 3. Any person to whom the custody of any minor is so disposed of, may take the custody and tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor ; he shall also take the custody and management of the real and personal estate of such minor, unless restrained by the deed or will as aforesaid, during the time for which such disposition shall have been made, and bring such actions in relation thereto, as a guardian appointed under the provisions of the laws of the State.

Guardians may be removed by complaint to the circuit court. SEC. 4. Guardians appointed under the provisions of this act, shall be subject to removal upon complaint of any person in behalf of the minor, to the circuit court of the county in which such guardian may reside, and proof made of malconduct or misbehavior in the performance of his duties, or of a failure to perform his duties, and upon the removal of a guardian, the said court is hereby vested with the power to appoint another guardian, and to make all such orders as may be necessary to compel the guardian removed to deliver over to the successor the custody of the minor, and to account for the estate, and pay over all moneys belonging to the ward, and to compel such successor to execute a bond with good security, in such penalty and with such conditions as the court may deem necessary for the security of the rights of the minor, and the said court shall also have power, upon application of any person in behalf of the minor, to require all guardians appointed under the provisions of this act, by the father or mother, or by the court, to give bond and security in such penalty and with such conditions as the court may deem necessary for the security and protection of the minors, and of his or her estate.

Successor to give bond.

This act shall take effect on the first day of June next.

APPROVED, Jan. 27, 1835.

AN ACT for increasing the penalty of the Treasurer's bond. In force March 1, 1837.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the penalty of the Treasurer's bond shall hereafter be one hundred thousand dollars, conditioned as now required by law. Amount of treasurer's bond.

APPROVED, March 1, 1837.

AN ACT to encourage the killing of wolves. In force March 2, 1837.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That every person who shall take and kill any wolf or wolves in this State, shall receive the following bounty, to wit : for each wolf known and denominated as the "big wolf," of six months old and upwards, the sum of one dollar ; for each wolf of the same kind under the age of six months, the sum of fifty cents ; and for each wolf known and denominated the prairie wolf of any age, the sum of fifty cents, to be paid out of the State treasury on the certificate of the clerk of the county commissioners' court where such wolf or wolves were taken and killed. Compensation for killing wolves.

The person claiming such reward shall produce the scalp or scalps with the ears thereon within thirty days after the same was taken and killed, to the clerk of the county commissioners' court within the county where such wolf or wolves were taken and killed ; who shall administer to the said person the following oath or affirmation, viz : "you do solemnly swear or affirm, (as the case may be) that the scalp or scalps produced by you, were taken from a wolf or wolves killed within this State within thirty days past, and that you believe such wolf or wolves from which they were taken were over or under six months old, and are of a large or small kind," (as the case may be.) How paid. Proof. Scalp to be produced. Oath.

SEC. 2. It shall be the duty of the clerk of the county commissioners' court to grant to such persons as may produce the scalp or scalps of wolves, a certificate, stating the quantity and quality of them, and the amount he is entitled to receive for the same, and shall immediately destroy the scalps so produced. Clerk to give certificate.

SEC. 3. Any person holding a certificate under the provisions of this act, who shall produce the same to the sheriff or collector of any state revenue in payment of any taxes due the state, such sheriff or collector shall receive the same as, and in lieu of money. Good for taxes.

SEC. 4. When any sheriff or collector shall produce a certificate as before directed to the Auditor of Public Accounts, it shall be his duty to give such sheriff or collector credit for the amount thereof. Auditor to give credit therefor.

SEC. 5. The clerk of the county commissioners' court shall be entitled to receive from the person applying for a certificate as above, the sum of twelve and a half cents, as a compensation for each certificate : provided, in all cases where there are more than Clerk's fees. Proviso.

one scalp produced by one person at the same time, the clerk shall include them all in the same certificate.

This act to be in force from and after the first day of March next.

APPROVED, Feb. 15, 1837.

WEIGHTS AND MEASURES.

AN ACT regulating Weights and Measures.

*In force
March 22,
1819.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That it shall be the duty of the county commissioners in each and every county within this state, as soon as practicable after they are qualified to office, to procure, at the expense of their respective counties, one measure of one foot, or twelve inches, English measure, so called; also, one measure of three feet, or thirty-six inches, English measure, as aforesaid; also, one gallon, liquid or wine measure, which shall contain two hundred and thirty-one cubic inches; one measure that shall contain one fourth part; one measure that shall contain one eighth part; one measure that shall contain one sixteenth part of the aforesaid liquid gallon, denominated quart, pint, and gill, each of which shall be made of some proper and durable metal; also, one half bushel measure for dry measure, which shall contain eighteen quarts, one pint, and one gill of the above liquid or wine measure, the solid contents of which is equal to one thousand and seventy-five cubic inches and fifty-nine hundredths of a cubic inch; likewise, one measure that shall contain one fourth part of the aforesaid half bushel, or one gallon dry measure, which said half bushel and its fourth shall be made of copper or brass: Also a set of weights of one pound, one half pound, one fourth pound, one eighth pound, and one sixteenth pound, made of brass or iron; the integer of which shall be denominated one pound avoirdupois, and shall be equal in weight to one thousand and twenty grains troy or gold weight: which measures and weights shall be kept by the clerk of the county commissioners for the purpose of trying and sealing the measures and weights used in their courts: for which purpose the said several clerks shall be provided with a suitable seal or seals with the name or initials of their respective counties inscribed thereon.

*Shall give
notice.*

SEC. 2. That as soon as the county commissioners shall have furnished the measures and weights as aforesaid, they shall cause notice thereof to be given at the court house door one month in succession immediately thereafter; and any person thereafter, who shall knowingly buy or sell any commodity whatsoever, by measures or weights in their possession, which shall not correspond with the county measures and weights, shall, for every such offence, being legally convicted thereof, forfeit and pay the sum of twenty dollars for the use of the county where such offence shall have been committed, and costs of suit, to be recovered before

any justice of the peace of said county. Every person desirous of having their measures and weights tried by the county standard, shall apply to the clerk of the county commissioners, and if he find it correspond with the county standard, shall seal the same with the seal provided for that purpose; and said clerk is allowed to demand and receive such fees as now are, or hereafter may be allowed by law.

This act to be in force from and after its passage.

APPROVED, March 22, 1819.

WORSHIPING CONGREGATIONS.

AN ACT to preserve good order in all Worshiping Congregations and Societies in this state. *In force
May 1,
1833.*

SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly,* That any person who shall, by menace, profane swearing, vulgar language, or any disorderly or immoral conduct, interrupt and disturb any congregation or collection of citizens assembled together for the purpose of worshipping Almighty God, or who shall sell, or attempt to sell, or otherwise dispose of ardent spirits or liquors, or any articles which will tend to disturb any worshiping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined in any sum not exceeding fifty dollars: *Provided,* That this act shall not be so construed as to affect any person who may sell whiskey, or any other ardent spirits at his own distillery, store, or dwelling house.

*Persons
disturbing
religious
congrega-
tions.*

*Punish-
ment.*

Proviso.

SEC. 2. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offences, and may, on view, or upon information on oath, cause every such person, having offended as aforesaid, to be apprehended and brought before him to answer such charge.

*Justices of
the peace to
have juris-
diction of
said offen-
ces.*

SEC. 3. Any person who shall be accused as aforesaid, if he choose it, shall have the cause tried by a jury of six lawful jurors, and if he shall insist on a full jury, by twelve, who shall be summoned to try the cause; and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than stated in the first section of this act, upon which the justice before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine and costs, and proceed to collect the same without delay; and when said fine shall be collected, the officer or person collecting the same shall be required to pay it over without delay to the treasurer of the proper county, taking his receipt therefor; and which receipt shall be

*Accused
may be
tried by a
jury.*

filed with the clerk of the county commissioners' court; after which the said fine or fines which may be thus deposited shall be subject to the control of said court, and appropriated to the education of any poor orphan child or children of the proper county.

*Appeals
allowed.*

Sec. 4. Any person who may consider himself or herself aggrieved by the judgment of the justice, may appeal to the circuit court of the county, and may remove the same, as in cases of assault and battery. This act to take effect on the first day of May next.

APPROVED, March 1, 1833.

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